

EVIDENTIARY HEARING
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)
)
Application for Certification) Docket No.
for the GWF Tracy Peaker Project) 01-AFC-16
Project in San Joaquin County)
(GWF Energy LLC))
_____)

HOLIDAY INN EXPRESS HOTEL & SUITES

LODI ROOM

3751 TRACY BOULEVARD

TRACY, CALIFORNIA 95304

FRIDAY, MARCH 8, 2002

10:00 A.M.

Reported by:
Valorie Phillips
Contract No. 170-01-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

Robert Pernel, Commissioner, Presiding Member

Robert Laurie, Commissioner, Associate Member

HEARING OFFICER PRESENT

Cheryl Tompkin, Hearing Officer

STAFF AND CONSULTANTS PRESENT

Kerry A. Willis, Staff Counsel

Cheri Davis, Project Manager

Alvin J. Greenberg, Ph.D., REA, QEP, President
Risk Science Associates

Joe Morgan, Senior Project Manager, URS

PUBLIC ADVISER

Robert Mendonca, Public Adviser

APPLICANT

John P. Grattan, Esq., Counsel for Applicant
Grattan and Galati

Irwin D. Karp, Esq., Counsel for Applicant
Grattan and Galati

David A. Stein, P.E., Senior Project Manager, URS

Douglas W. Wheeler, Vice President, GWF

Hal Moore, P.E., GWF

INTERVENORS PRESENT

Robert Sarvey

Irene Sundberg

Charles Tusso

Bill Reed, City of Tracy

ALSO PRESENT

Lynn G. Bedford, Board of Supervisors, San Joaquin
County

Brad Williamson, Business Representative, Int'l
Brotherhood of Electrical Workers, Local 595

Robin Sarvey

Carol Dominguez

Lori Stewart

Wayne Yamamoto

Annette Elissagaray

Scott Stewart

Robert Klein

Mike Roscelli

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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

1 P R O C E E D I N G S

2 10:00 a.m.

3 PRESIDING COMMISSIONER PERNELL: Good
4 morning. I trust everyone had a good night's
5 sleep and are prepared to continue.

6 This is a continuation of the
7 evidentiary hearing on the GWF Energy LLC
8 application for certification for the GWF Tracy
9 Peaker Project.

10 My name is Commissioner Pernell. I am
11 the presiding member. Commissioner Laurie is the
12 associate member. Commissioner Laurie is right
13 there. The hearing officer for today's proceeding
14 is Ms. Tompkin. She will be conducting the
15 hearing this morning and afternoon and evening.

16 (Laughter.)

17 PRESIDING COMMISSIONER PERNELL:
18 Commissioner Laurie, would you like to make a
19 statement at this time?

20 COMMISSIONER LAURIE: No, sir, thank
21 you.

22 PRESIDING COMMISSIONER PERNELL: Thank
23 you, Commissioner Laurie.

24 Ms. Tompkin.

25 HEARING OFFICER TOMPKIN: All right. At

1 this time I'm going to ask the parties to identify
2 themselves for the record, and we'll begin with
3 the applicant.

4 APPLICANT COUNSEL GRATTAN: John
5 Grattan. I'm counsel of the applicant. On my
6 immediate right is Dave Stein from URS, and my
7 colleague, Irwin Karp, who is also counsel here.
8 And in the front row is Doug Wheeler from GWF and
9 Hal Moore, and we have witnesses in the audience.

10 HEARING OFFICER TOMPKIN: Thank you,
11 Mr. Grattan. Staff?

12 STAFF COUNSEL WILLIS: Thank you. Good
13 morning. My name is Kerry Willis. I'm staff
14 counsel. And to my left is Dr. Alvin Greenberg,
15 our witness in hazardous materials and waste
16 management, and to his left is Cheri Davis, the
17 project manager.

18 HEARING OFFICER TOMPKIN: Thank you, and
19 are there any intervenors present? I see at least
20 one.

21 INTERVENOR REED: Bill Reed with the
22 City of Tracy.

23 HEARING OFFICER TOMPKIN: Thank you.

24 INTERVENOR SUNDBERG: Irene Sundberg,
25 resident of Tracy.

1 HEARING OFFICER TOMPKIN: Thank you.

2 Are there any other intervenors present? Seeing
3 none, we will --

4 INTERVENOR SUNDBERG: I think we hear
5 them coming in.

6 HEARING OFFICER TOMPKIN: All right.
7 Well, maybe when they come in, we will get them on
8 the record.

9 At this time we are proceeding with the
10 topic area of hazardous material, so I'm going to
11 ask the applicant to call its first witness.

12 MR. GRATTAN: Yes. Applicant calls Joe
13 Morgan.

14 HEARING OFFICER TOMPKIN: And could
15 Mr. Morgan be sworn in, please.
16 Whereupon,

17 JOE MORGAN
18 Was called as a witness herein and, after first
19 being duly sworn, was examined and testified as
20 follows:

21 DIRECT EXAMINATION

22 BY MR. GRATTAN:

23 Q Mr. Morgan, you've been sworn. Could
24 you give us your name, address and current
25 employment, and your role in the project.

1 A Thank you. My name is Joe Morgan the
2 IIIrd. I live at 19124 Mount Lassen Drive, Castro
3 Valley, California. I am a senior project manager
4 with URS in Oakland. My role in this project was
5 to develop the hazardous material handling section
6 of the application for certification and some
7 additional documents related to that, and also
8 supervise the preparation of the waste management
9 section.

10 Q And you're here now to discuss the
11 hazardous waste -- excuse me, the hazardous
12 materials section of the application?

13 A That's correct.

14 Q And you prepared testimony as part of
15 the applicant's package?

16 A Yes, I did.

17 Q And can you affirm that testimony under
18 oath today?

19 A Yes, I can.

20 Q And are you sponsoring any exhibits at
21 this hearing?

22 A Yes. Section 8.12 of the application
23 for certification submitted on August 2001, and
24 Data Response 26 submitted on November 9th, 2001.

25 Q And I always forget this. Mr. Morgan,

1 because you previously submitted your resume and
2 qualifications, could you briefly outline those
3 qualifications.

4 A Yes. I have a bachelor's in chemistry
5 from Georgia Tech, I graduated 1973. I have 18
6 years experience at heavy industry. I started out
7 as a bench chemist. I was promoted to be the
8 environmental manager for a company in the
9 Southeastern United States. I had environmental
10 responsibility for nine manufacturing plants on
11 the east coast. In 1981 I transferred to
12 California to another company, basically with
13 similar responsibilities for six manufacturing
14 plants. All these facilities involved large
15 volumes of hazardous materials.

16 My duties included conducting compliance
17 audits for regulatory compliance at all these
18 facilities, both on the east coast and west cost;
19 working with the engineering departments on safe
20 utilization and storage of hazardous materials.
21 Did a lot of waste characterization and hazardous
22 waste disposal activities in those facilities.

23 I joined Woodward-Clyde Consultants, now
24 part of URS Consultants in 1991. My practice has
25 included a lot of consulting on hazardous

1 materials and waste management. I do a lot of
2 work in those areas still today, principally for
3 Caltrans projects on characterization and
4 utilization of soils related to freeway projects.

5 I've also been involved in developing
6 spill control plants, hazardous materials plants,
7 waste management plants for a variety of projects.
8 Those include plans for a large gas pipeline
9 project, a very large civil engineering project in
10 the Guadalupe corridor in San Jose. I've also
11 prepared hazardous materials sections and waste
12 management sections for applications for
13 certification for approximately seven energy
14 facility projects over the last three years.

15 Q Thank you. And now, could you briefly
16 summarize your testimony.

17 A I prepared the hazardous materials
18 section of the application for certification. In
19 doing so, I analyzed the impact of the storage,
20 handling and use of hazardous materials associated
21 with the construction and operation of the TPP. I
22 have concluded that with the imposition of the
23 proposed mitigation measures, the project will not
24 have any significant impact no public health or
25 safety, either individually or cumulatively.

1 Mitigation measures include the
2 following items: Employees at the facility will
3 be trained in the safe use of the hazardous
4 materials used on site, and on use of the fire
5 suppression and other facility emergency
6 equipment. Storage of hazardous materials will be
7 minimized to the extent possible. Hazardous
8 materials piping will be protected from traffic.
9 Aqueous ammonia will be used instead of the more
10 toxic anhydrous ammonia for the selective
11 catalytic reduction of nitrous oxides.

12 Secondary containment will be used for
13 hazardous materials including a double-walled
14 aqueous ammonia storage tank. Aqueous ammonia
15 piping and valves will be regularly inspected,
16 tested and replaced as needed. A concrete truck
17 unloading area will be used for the unloading of
18 aqueous ammonia. This area will be equipped with
19 a secondary containment tank to collect and hold
20 spills, should any occur. And finally, a trained
21 GWF operations person will be present during the
22 unloading of aqueous ammonia from these trucks.

23 We performed an off-site consequence
24 analysis evaluating potential off-site impacts of
25 an aqueous ammonia spill under ultraconservative

1 or worst-case conditions. The OCA conclusion was
2 there would be no significant off-site impacts
3 from such a spill. And finally, the project will
4 comply with all applicable laws, ordinances,
5 regulations, and standards. Thank you.

6 Q Thank you. And you have read the staff
7 assessment?

8 A Yes, I have.

9 Q And do you agree with its conclusions
10 and with its conditions?

11 A Yes, I do.

12 MR. GRATTAN: And I have no further
13 questions. The witness is available for cross
14 examination.

15 HEARING OFFICER TOMPKIN: Does staff
16 wish to question this witness?

17 MS. WILLIS: No, we don't.

18 HEARING OFFICER TOMPKIN: Are there any
19 questions from the intervenors?

20 INTERVENOR SUNDBERG: Yes.

21 CROSS EXAMINATION

22 BY INTERVENOR SUNDBERG:

23 Q Mr. Morgan, in your --

24 PRESIDING COMMISSIONER PERNELL: State
25 your name, please.

1 INTERVENOR SUNDBERG: Irene Sundberg.

2 BY INTERVENOR SUNDBERG:

3 Q In your written GWF testimony under tab
4 ten, you stated that with the imposition of the
5 proposed mitigation, the TPP will no longer --
6 will not have a significant impact on public
7 health safety, either individually or
8 cumulatively; is that correct?

9 A Yes, ma'am.

10 Q In your expert opinion, if the
11 mitigation you proposed was not obtainable, would
12 you recommend building this project?

13 A Well, the mitigation measures are
14 routinely applied to any type of industrial
15 facility. They're very common, they're easily
16 engineered and installed, so I don't think that
17 the question is realistic.

18 Q Okay. If there was no need to use
19 aqueous ammonia in this facility, would there be a
20 need for a hazardous discussion at this point?

21 A Yes, there would. There are a number of
22 other hazardous materials used on-site, mainly
23 lubricating oils, other similar materials that are
24 used in industrial facilities. Not high volumes
25 of them, but there are a number of other materials

1 there.

2 Q Is aqueous ammonia a fire hazard?

3 A No, it's not.

4 Q Thank you. Hypothetically, if this
5 plant were to be solar or wind-generated, would
6 there be a need for aqueous ammonia?

7 A No, there wouldn't.

8 INTERVENOR SUNDBERG: Thank you.

9 HEARING OFFICER TOMPKIN: Any other
10 questions by intervenors?

11 All right. Mr. Grattan?

12 MR. GRATTAN: No further cross? Then I
13 would move the applicant's testimony into evidence
14 as well as the exhibits that the applicant is
15 sponsoring.

16 And, in terms of the exhibits to be
17 marked, the witness is sponsoring Section 8.12 of
18 the original application, August 2001, that is
19 already Exhibit One. And a new exhibit, and if I
20 was paying attention earlier this morning, I think
21 we are up to Number 39; is that correct?

22 HEARING OFFICER TOMPKIN: That's
23 correct.

24 MR. GRATTAN: Okay. So to be marked as
25 Exhibit 39, Applicant's Data Response 26,

1 November 9th, 2001.

2 HEARING OFFICER TOMPKIN: That document
3 will be marked as Exhibit 39 for identification.

4 (Thereupon, the above-referenced
5 document was marked as Staff's
6 Exhibit 39 for identification.)

7 HEARING OFFICER TOMPKIN: Is there any
8 objection to the evidence that's being moved into
9 evidence at this time?

10 MS. WILLIS: No.

11 HEARING OFFICER TOMPKIN: Hearing no
12 objection, the evidence sponsored by Mr. Morgan
13 will be admitted in evidence.

14 (Thereupon, the above-referenced section and
15 documents marked as Staff's Exhibit 39 for
16 identification, was received into evidence.)

17 HEARING OFFICER TOMPKIN: Do you have
18 another witness, Mr. Grattan?

19 MR. GRATTAN: No, that's all.

20 HEARING OFFICER TOMPKIN: All right.

21 (Thereupon, the witness was
22 excused from the stand.)

23 HEARING OFFICER TOMPKIN: All right.
24 Staff, your witness?

25 MS. WILLIS: Go ahead, Mr. Greenberg.

1 Whereupon,

2 ALVIN GREENBERG

3 Was called as a witness herein and, after first
4 being duly sworn, was examined and testified as
5 follows:

6 PRESIDING COMMISSIONER PERNELL: Before
7 we continue, we have two additional intervenors
8 who have arrived. Would you please come up and
9 identify yourselves.

10 INTERVENOR SARVEY: Bob Sarvey.

11 INTERVENOR TUSO: Chuck Tusso.

12 PRESIDING COMMISSIONER PERNELL: Are
13 there any other intervenors that have arrived?

14 Thank you. Please continue.

15 MS. WILLIS: Thank you.

16 DIRECT EXAMINATION

17 BY MS. WILLIS:

18 Q Dr. Greenberg, would you please state
19 your name for the record.

20 A Alvin Greenberg.

21 Q And you have just been sworn in, and a
22 statement of your qualifications was given last
23 night, and I believe that would be covering
24 hazardous materials. If there isn't any objection
25 from the parties, we'll go ahead with our

1 testimony.

2 HEARING OFFICER TOMPKIN: Hearing no
3 objection, you may proceed.

4 BY MS. WILLIS:

5 Q Was a statement of your qualifications
6 attached to your testimony?

7 A Yes, it was.

8 Q And did you prepare the testimony
9 entitled Hazardous Materials Management in the
10 staff assessment?

11 A Yes.

12 Q And did you also supply the section
13 entitled Hazardous Materials Management -- I
14 believe it was an addendum in the supplement?

15 A Yes.

16 Q Do you have any changes to your written
17 testimony that you're proposing today?

18 A No.

19 Q And do the opinions contained in your
20 testimony represent your best professional
21 judgment?

22 A Yes.

23 Q Could you please briefly explain how you
24 evaluated hazardous materials use and handling?

25 A Yes. I conducted what I refer to as a

1 top-to-bottom review of each hazardous material,
2 and we can refer to table, the AFC table 8.12-1,
3 -2 and -3, which lists the hazardous materials
4 proposed for use during the construction phase and
5 the operations and maintenance phase. I looked at
6 the amount of the hazardous materials proposed for
7 use, its physical form -- whether it's a solid, a
8 liquid or a gas -- how it's going to be used, the
9 storage and the transportation of the hazardous
10 materials to the facility. I looked at the
11 toxicity of each material.

12 I looked at the proposed engineering and
13 administrative controls that are designed to
14 prevent an accidental release. And I also looked
15 at the administrative and engineering controls
16 that would be used to minimize any release and
17 prevent migration off the site, should an accident
18 occur.

19 Finally, I did review and evaluate the
20 off-site consequence analysis prepared by
21 consultants to the applicant regarding, or
22 addressing, rather, a release of aqueous ammonia
23 from the facility.

24 Q Based on that analysis, did you conclude
25 that there were any hazardous materials that could

1 potentially result in off-site consequences?

2 A My analysis resulted in me arriving at
3 the conclusion that there were only two materials
4 that could potentially cause a risk of off-site
5 consequences, and this is by virtue of the amount
6 of the materials and your ability to migrate off
7 the site, as well as toxicity. And that would be
8 aqueous ammonia, approximately 9,000 gallons that
9 would be stored on site and used, and natural gas.

10 Q Could you please explain the potential
11 consequences of natural gas.

12 A Natural gas, of course, burns. And I
13 think everybody understands that sometimes there
14 are accidents that involve release of natural gas.
15 It was my job to make sure that natural gas would
16 not leak, that the risk of there being a leak of
17 natural gas into the atmosphere, either at the
18 site or off site, was brought to an absolute level
19 of insignificance, an insignificant risk.

20 One of the things that we do is we make
21 sure that they comply with all LORS, that the
22 applicant follows all the statutes and regulations
23 when it comes to handling and transporting natural
24 gas, including the gas pipeline from the PG&E
25 location to the facility.

1 There are numerous standards and
2 regulations to ensure that natural gas pipelines
3 are built safely and that they will safely handle
4 natural gas. I have reviewed a number of natural
5 gas pipeline failures that have occurred as a
6 result of other forces, including seismic events,
7 because California is earthquake country. I've
8 reviewed the results of engineering investigations
9 from the Northridge earthquake, from the Kobi,
10 Japan earthquake, from the Loma Prieta earthquake,
11 and then recently, just a little over a year ago,
12 the Nesquali earthquake in the Seattle-Olympia,
13 Washington area.

14 What we have found is that natural gas
15 pipelines built to today's standards or I should
16 say modern standards, in the last ten years, and
17 these standards are developed by the US Department
18 of Transportation, Office of Pipeline Safety, as
19 well as the California Public Utilities
20 Commission, pipelines built to those standards do
21 not fail under those circumstances, and they have
22 not failed.

23 And so I am proposing conditions of
24 certification that will ensure that the pipeline
25 is, indeed, built to those standards. Proposed

1 conditions of certification haz seven, eight and
2 nine address that very issue. Number seven
3 requires that the project owner would require that
4 the gas pipeline undergo a complete initial
5 construction inspection, and then a detailed
6 inspection after 30 years, and then five years
7 thereafter.

8 This is consistent with what is still a
9 proposal from the Office of Pipeline Safety from
10 the Department of Transportation. It is not
11 officially a regulation yet, but it's something
12 that's excused upon, coming down the pipeline. I
13 know, I won't quite my day job.

14 (Laughter.)

15 THE WITNESS: And staff is requesting
16 that you institute this even ahead of the game,
17 because it makes sense, it's a risk management
18 approach to ensure that the pipeline, when built
19 to certain specifications, maintains its
20 integrity.

21 Haz eight addresses the issue if there
22 is a significant seismic event or an earthquake in
23 the area where there is ground rupture, that the
24 pipeline be inspected immediately. And haz nine
25 states that the pipeline will be designed to meet

1 CPUC -- That's California Public Utilities
2 Commission -- General Order 112(d) and (e) and
3 58(a) standards. Actually, it's 112(e) now; (d)
4 is pretty much -- the new standard is (e), and it
5 really supersedes (d), which is just about the
6 same thing.

7 Nevertheless, you can see in our
8 proposed condition, haz nine, that there would be
9 certain safety features in the pipeline, and that
10 there be valves installed to isolate the line, if
11 a leak occurs, and, of course, appropriate
12 corrosion protection to ensure, once again, that
13 the pipeline does not fail.

14 Q Thank you. Could you please also
15 explain the consequences of using and handling
16 aqueous ammonia?

17 A Yes. I determined that the greatest
18 potential for risk of off-site impacts would be
19 involving an accidental release of aqueous
20 ammonia, and that if the release of aqueous
21 ammonia were mitigated to the point of
22 insignificance, that the release of any other
23 hazardous material would be less than that.

24 This would potentially pose the greatest
25 risk. So if -- rather than analyze off-site

1 consequences of every single hazardous material, I
2 take the worst, and if that one results in
3 insignificant risks to the off-site public, we
4 know that the others would result in no higher a
5 risk than that.

6 The engineering controls proposed by the
7 applicant for the storage of 9,000 gallons of
8 aqueous ammonia are state-of-the-art controlled.
9 They are proposing to use a double-walled storage
10 tank. What that means is that the secondary
11 containment is already in place within the
12 structure of the tank itself, so that if there is
13 an accident or some sort of failure of the first
14 tank, the second wall is right there and it
15 captures and prevents any release whatsoever to
16 the atmosphere of aqueous ammonia.

17 From an engineering perspective and a
18 safety perspective, this is much preferred. It
19 costs more to have a double-walled tank.
20 Normally, in some other projects which you may be
21 familiar with, there is a single-walled tank and
22 then a catchment basin around that tank. So if
23 there is a failure of the single-walled tank, the
24 catchment basin contains the aqueous ammonia, but
25 there is then some vaporization to the atmosphere,

1 and one conducts an off-site consequence to see
2 how much of that would evaporate into the air and
3 spread off site.

4 In this case, you don't have that
5 happening at all. It's all contained within the
6 secondary wall of the tank. So the off-site
7 consequence analysis conducted by the applicant
8 included a worst-case scenario of the transfer
9 from the tanker truck to the tank, and not a
10 failure of both walls of the tank.

11 The failure of one wall of the tank has
12 got an extremely low probability. In fact, I can
13 tell you that of all CEC-certified power plants in
14 the State of California, there has never been a
15 failure of an aqueous ammonia storage tank. So if
16 you take that probability as being extremely low,
17 and then take the probability that the second wall
18 would fail, you see that the probability is almost
19 non-existent -- you know, one in a trillion, one
20 in a quadrillion, something like that. We
21 couldn't even calculate what the failure rate
22 would be in a double-walled tank.

23 So that is preferable, so the off-site
24 consequence addressed the transfer operation.
25 Staff has previously found and the data exists to

1 support it that far and away the greatest
2 opportunity or chance for aqueous ammonia to drift
3 off site occurs during the transfer operation from
4 the delivery vehicle to the storage tank, so that
5 is the analysis that the applicant conducted.
6 That is quite proper, it's appropriate under the
7 California Accidental Release Program, as well as
8 the US EPA RMP, Risk Management Plan Program.

9 So it's consistent, and it was my job to
10 review and evaluate and make sure they conducted
11 their air dispersion modeling correctly, and
12 looking at the various worst-case weather
13 conditions as well -- very high temperature, low
14 stability -- to see whether there would be any
15 off-site consequence. We found there was not an
16 off-site consequence as a result of that type of
17 leak.

18 Once again, the probability of the event
19 occurring is extremely low, but that's not the
20 question that we ask. We assume what if. What if
21 there is a release, a significant release of the
22 entire tanker truck contents, 6,000-plus gallons
23 onto the transfer pad, and engineering controls
24 would have that spill drained down to a subsurface
25 structure. So it's not like it's going to run all

1 over the place. Instead, it will be collected and
2 drained down, and so we're asking the question
3 what if it happens, even though it's not happened
4 before in a California-Energy-Commission-certified
5 power plant, but what are the results if it
6 should.

7 And so we build a protection into the
8 project, or we ask the applicant, rather, to build
9 protection, to mitigate something which hasn't
10 occurred yet, and hasn't occurred at a gas-fired
11 power plant certified by you.

12 Nevertheless, we still go one step
13 forward and, if you look at proposed conditions of
14 certification haz two, three and four, we are
15 proposing hazardous -- condition of certification
16 haz two, that the RMP -- That's the Risk
17 Management Plan -- as well as the Hazardous
18 Materials Business Plan, both of which are
19 required by law, we are bringing this forward out
20 of the LORS section and putting in a proposed
21 condition of certification to ensure that everyone
22 knows that it has to be distributed, reviewed and
23 commented on before it's finally approved.

24 And that gives the San Joaquin County
25 Department of Environmental Health, which is the

1 certified unified program authority in this area,
2 the opportunity to review and comment on this, and
3 then send it off to the CEC CPM with their review
4 and comments. That's in the statute and that is
5 brought forward here in a condition of
6 certification to make it clear.

7 Haz three requires the applicant to go
8 another step forward in developing a safety
9 management plan for the transfer of aqueous
10 ammonia to the storage tank. Once again, the
11 greatest chance for there to be an accidental
12 release is during the transfer operation. They
13 have engineered controls to mitigate a spill,
14 should one occur. A safety management plan is an
15 administrative control that will go towards
16 preventing that spill from occurring at all.

17 And these administrative controls and
18 this safety management plan will include training.
19 It could include such things as making sure that
20 there are no mixing of incompatible materials.
21 You don't want to hook up your tanker truck of
22 aqueous ammonia to a storage tank containing
23 another chemical. A lot of chemicals are
24 incompatible and you'll get a chemical reaction.

25 And this can be done in various ways

1 administratively. You can color code them, or you
2 can do what we used to do back when we had leaded
3 gas and unleaded gasoline. You couldn't put an
4 unleaded gasoline nozzle into the leaded tank or
5 vice versa. They were different sizes. And you
6 can color code these or have them different sizes.

7 We will review and evaluate their safety
8 management plan. We're not going to tell them
9 right now the detail they should go into, but we
10 will review and evaluate and approve their safety
11 management plan.

12 Finally, there is number four, proposed
13 condition haz four, where the tank has to be
14 designed to meet all applicable standards and
15 regulations, and it puts in the condition of
16 certification the applicant's own plan to have a
17 double-walled tank, just in case they change their
18 mind, not that they have given any indication at
19 all that they're not going to do that, it's just
20 that it would put in as a condition of
21 certification that that's what they have to do.

22 Q Okay, thank you. Did you also evaluate
23 the proposed transportation route for the
24 transporting of aqueous ammonia?

25 A Yes, I did. Transportation is also an

1 important part of my review and evaluation. We
2 want to make sure that the transportation route
3 and the method of transportation is safe and
4 appropriate. And the transportation route would
5 be leaving the interstate freeway, 580 or no, it's
6 205 at this point, at Mountain House Parkway, then
7 turning onto Schulte Road, and then to the site.

8 We want to make sure that it doesn't go
9 by any schools, it doesn't go by churches,
10 hospitals, day care centers, etc. Just as
11 important, we want to make sure that the aqueous
12 ammonia is transported in appropriately safe
13 vehicles, and the DOT, Department of
14 Transportation, MC-307 vehicle, tanker truck is a
15 high-integrity, high-strength stainless steel tank
16 that has been shown, through my review of at least
17 the last decade of accident reports as compiled by
18 the NRC -- That's the National Response Center
19 which is run by the US Coast Guard -- to show that
20 here in California there has never been an
21 accidental release from an aqueous ammonia tanker
22 truck.

23 Now, there was a spill of aqueous
24 ammonia a couple of years ago with a 55-gallon
25 drum falling off the back of a truck, and that's

1 an entirely different scenario than what staff is
2 recommending in this case. So I can tell you from
3 practice, as well as from design features, that
4 the aqueous ammonia will be transported safely.

5 Q Thank you. Finally, does the project,
6 with the proposed conditions of certifications,
7 pose a significant adverse impact to the
8 environment, or public safety and health?

9 A No. In my professional opinion and
10 experience, it does not.

11 Q And also, does it comply with all laws,
12 ordinances, regulations, and standards?

13 A Yes.

14 Q Does that conclude your testimony?

15 A Yes.

16 MS. WILLIS: This witness is now
17 available for cross examination.

18 MR. GRATTAN: If we could hold ours
19 until the end, I'd appreciate it.

20 HEARING OFFICER TOMPKIN: All right. Is
21 there any cross by any intervenors?

22 CROSS EXAMINATION

23 BY INTERVENOR SUNDBERG:

24 Q Dr. Greenberg, you just testified that
25 the travel area that -- the street that would be

1 traveled on would not go past a school, a day
2 care, any of those types of facilities. That
3 would be the choice, that it would not happen; am
4 I right?

5 A Correct.

6 Q Are you aware of that the City of Tracy
7 has just given to a large part of our community a
8 50-acre parcel to become a sports park, which is
9 going to include another 150 acres, so there will
10 be approximately 200 acres out there that is going
11 to become a sports park, a soccer field for our
12 children on Schulte Road?

13 A No, I'm not aware of that, but I'd be
14 happy to respond to that.

15 Q It's at the Antenna Farm. Do you know
16 which properties I'm talking about?

17 A No, I don't.

18 Q Okay. Can you respond to that, please?

19 A Yes. I included schools and day cares,
20 hospitals. I specifically left out parks or
21 recreational facilities. First of all, one of the
22 reasons was that is outdoor activity and people
23 are mobile, but more importantly, once again,
24 we're not dealing with a situation that occurs
25 very often -- In fact, it hasn't occurred at all

1 -- and that is a tanker truck containing aqueous
2 ammonia, an MC-307 tanker truck containing this
3 chemical overturning and spilling out its
4 contents. That has not happened.

5 But I'm more concerned about the fixed
6 facilities where people are stationary, as opposed
7 to those running around. I also didn't say
8 shopping centers or other commercial or industrial
9 areas. But what we do want to avoid is a
10 transportation route where there are kids in
11 school or, you know, hospitals and clinics, things
12 of that nature.

13 INTERVENOR REED: Bill Reed, City of
14 Tracy.

15 CROSS EXAMINATION

16 BY INTERVENOR REED:

17 Q Dr. Greenberg, in your analysis, did you
18 analyze future and proposed schools, as well as
19 existing schools, or only existing schools?

20 A Only existing schools. Once again, I
21 was aware of some future schools as well as some
22 future houses of worship. But I'm not aware that
23 there is any proposal for a school along this
24 route, and if there is, I would like to know about
25 that.

1 INTERVENOR REED: That's all I have,
2 thanks.

3 INTERVENOR SARVEY: Good morning,
4 everybody.

5 CROSS EXAMINATION

6 BY INTERVENOR SARVEY:

7 Q In a previous workshop, Dr. Greenberg,
8 the applicant stated as part of his community
9 benefits program that he would be purchasing his
10 ammonia in Tracy. Has he identified a source of
11 ammonia in Tracy to you?

12 A No, he has not. I'm aware of certain
13 locations that produce ammonia, but they have not
14 identified a location.

15 Q Are you aware of any source in the City
16 of Tracy that would sell this ammonia?

17 A No, not personally.

18 Q If the applicant was to purchase his
19 aqueous ammonia in Tracy, I think it -- Well,
20 can't say it that way. Well, if the applicant has
21 not described a source, has he described a route
22 to you at this point?

23 A I have described this route, making an
24 assumption based upon my knowledge that there is a
25 source of ammonia in Stockton. And the applicant

1 certainly has not raised any issue with my choice
2 of route, so if the Commission does indeed accept
3 staff's recommendation, limiting the route to
4 what's described here in this proposed condition
5 of certification, the applicant will be bound by
6 that.

7 Q Okay. Is it possible for you to examine
8 your route in -- from the perspective that the
9 ammonia was purchased in Tracy?

10 A Oh, certainly it's possible, and if
11 additional information comes to light that the
12 applicant wishes to contest this route or take a
13 different route, they will have to go to the
14 compliance project manager. If the Commissioners
15 adopt this condition of certification, this is
16 what the applicant would be required to do, and
17 they'll have to go to the compliance project
18 manager of the CEC to try and negotiate a
19 different route and give the reasons why.

20 Q Will the public be allowed to comment on
21 that?

22 A I don't know how Compliance handles
23 that. Perhaps Ms. Willis has an answer.

24 MS. WILLIS: Just to clarify, it would
25 depend on if the change is significant, is

1 considered significant. If it is, then it would
2 go back to through the amendment process where it
3 would be open to the public. If it's not, it
4 could be handled at the staff level.

5 Q In light of the fact that you're not
6 aware of any future schools, would you like me to
7 supply you with the Tracy Hills and South Schulte
8 project and enter it into evidence for your
9 examination?

10 A Yes, I'm perfectly willing to look at
11 any additional information.

12 Q I apologize. It's out in the car and
13 I'll supply it after your testimony.

14 A Thank you, Mr. Sarvey.

15 Q Can you describe what happens to aqueous
16 ammonia when it's spilled? Does it turn to a gas?
17 does it increase in volume? Can you describe that
18 for me?

19 A Aqueous ammonia is a mixture of ammonia
20 and water. Ammonia is very soluble in water, but
21 ammonia is a gas, in and of itself, when it's not
22 mixed with water. And so depending on the
23 temperature, the size of the pool, other
24 meteorological conditions such as wind speed, when
25 aqueous ammonia is spilled, there will be some

1 ammonia vapors that come off the surface, and then
2 get dispersed.

3 Q Does the volume multiply when it is
4 exposed to the air?

5 A Well, any gas that is dissolved in
6 liquid, when it goes into the air there is an
7 expansion.

8 Q Do you have a ratio as far as the liquid
9 to the gaseous volume?

10 A No, it's dependent upon the
11 meteorological conditions, the temperature, etc.

12 Q So it could be a quite large volume, if
13 a deal -- say, during a transfer the aqueous
14 ammonia is spilled, the volume of the spill could
15 be much potentially larger due to the conditions
16 of the atmosphere and be more highly volatile;
17 would that be the case?

18 A Well, I think you might be confusing
19 terms there. The volume of the spill will be
20 limited by the geography of the spill area. You
21 know, if it's a transportation accident and it
22 spills into the side of the road, it could be
23 washed -- it's kept usually in a very narrow spill
24 area, because it will wash down the side of the
25 road either into soil, if there is no curb, and if

1 there is a curb, it will wash down into a gutter
2 and into a drain. So the area could be very
3 small.

4 You're talking about the evaporation of
5 the ammonia and what -- the plume, that is, the
6 plume size of that, and how that is dispersed.
7 And when you use the word "very large," actually
8 it wouldn't be very large, it would be very small,
9 particularly when you compare it to the other
10 choice, which the applicant has already mentioned.

11 The far more dangerous form of ammonia,
12 and that would be anhydrous ammonia, that can
13 result in a rapid expansion of an airborne plume,
14 almost like a fog, that would be of significance
15 size.

16 Q So does the aqueous ammonia, when
17 exposed to air, turn into the anhydrous ammonia?
18 Is that the --

19 A No, not at all. Anhydrous ammonia
20 exists and is virtually pure ammonia. Anhydrous
21 means there's no water, and so it's virtually pure
22 ammonia sitting in a tank, and under normal
23 temperatures and pressures, it is a gas. So it is
24 under pressure in that tank. So when something
25 like that releases, it's in a very, very

1 concentrated form.

2 Aqueous ammonia is a really very dilute
3 form. It's dissolved in water. Ammonia does like
4 to stay dissolved in water. And it will leave the
5 water slowly, certainly a lot less -- a lot slower
6 than anhydrous ammonia leaving a tank or a spill.

7 Q So the aqueous ammonia, therefore, is
8 not flammable; is that correct?

9 A Well, both forms of ammonia actually
10 aren't very flammable at all. It would take a lot
11 to burn it.

12 Q When the ammonia spills and then becomes
13 a gas, then, it's much more highly flammable;
14 would that be correct?

15 A No. If anything, it might become less,
16 because now you have less concentration. You've
17 probably heard about lower explosive limits for
18 methane and higher within -- Substances are
19 flammable and explosive, only within a certain
20 range. I don't have those numbers off the top of
21 my head for ammonia, but I can tell you that it's
22 really hard to get it to burn.

23 Q On the site visit to the Hanford plant,
24 the Tracy Press reporter, Jonathan Partridge,
25 reported that upon arrival there was the distinct

1 smell of natural gas in the air, and many of the
2 people who visited the site described that
3 experience also. Can you describe any efforts
4 from an ammonia and natural gas combination?

5 A There probably wouldn't be. The smell
6 of natural gas, as you know, is not the smell of
7 natural gas. It's the smell of a mercaptan --
8 That's a sulfur compound that's added to the
9 natural gas to give it some odor. Natural gas is
10 essentially odorless. But PG&E, Southern
11 California Edison, all the gas companies around
12 the nation all a little bit of a mercaptan so that
13 you can smell it and shut off the gas.

14 The ammonia is toxic in a certain
15 concentration, and there is a concentration below
16 which there are absolutely no effects at all. I
17 think you know that you have circulating ammonia
18 in your bloodstream. You will inhale a certain
19 amount of ammonia. It's very low levels, but it's
20 part of our metabolic processes. And so you have
21 to get a certain concentration, and that's
22 something that I discussed last night -- It may
23 have been earlier this morning -- about dose and
24 response.

25 Q When I described earlier that when --

1 the site visit to Hanford, the reporter distinctly
2 smelled ammonia, and all the people, would you
3 comment on that in terms of your assessment of
4 hazards? Would that be something that we should
5 be concerned about?

6 A Well, first of all, I have no knowledge
7 of what occurred at Hanford. But what I can tell
8 you is that the odor threshold of ammonia,
9 depending on the individual, is somewhere around
10 five parts per million.

11 Q No, I was speaking of the natural gas
12 leak and the natural gas itself. Is there a
13 hazard associated when you come to a plant of this
14 size and you smell natural gas on your arrival?
15 Would you consider that a dangerous situation?

16 A Yes. I'd consider it a dangerous
17 situation even if you walk into your home and you
18 smell that. It doesn't matter what plant size --
19 That's one of the reasons why the odor substance
20 is put in natural gas.

21 Q So if I arrive at the Tracy peaker plant
22 and --

23 MR. GRATTAN: Excuse me. With all due
24 respect, a kinder and gentler John Grattan is
25 going to have to object to this cross examination,

1 because it is assuming a sensory impression that,
2 while it may have been reported in the newspaper,
3 it's not in evidence here and there's really --
4 we're going down a road we have no opportunity to
5 defend ourselves against.

6 INTERVENOR SARVEY: I have a witness who
7 was actually at the Hanford plant, Mrs. Irene
8 Sundberg, who could testify to that.

9 MR. GRATTAN: Well, she's not on the
10 witness list. I guess you could call her. If you
11 want to go down the road as to whether someone may
12 have smelled natural gas at the plant on the
13 Hanford site business, I turn that over to the
14 Commission.

15 INTERVENOR SARVEY: Thank you, John.

16 HEARING OFFICER TOMPKIN: Well, I'll
17 sustain the objection. We can move on to a
18 different area. In terms of the relevance of the
19 gas at the Hanford plant, it's just not relevant.

20 INTERVENOR SARVEY: Well, I'm trying to
21 establish a possible hazard in relation to the GWF
22 plant, and I think it is relevant, since they do
23 operate the Hanford plant and, upon the only site
24 visit, that was what the first impression of
25 everyone, according to the newspaper and the

1 intervenors, Intervenor Sundberg and her husband
2 and other people that I've talked to, that I feel
3 this is a very relevant area to discuss.

4 HEARING OFFICER TOMPKIN: Do you wish to
5 respond, Mr. Grattan, before I make a final
6 ruling?

7 PRESIDING COMMISSIONER PERNELL: I'm
8 sorry, may I interject? I think the doctor has
9 stated that whether it's a plant or in your home,
10 if you smell natural gas, it's a hazard.

11 INTERVENOR SARVEY: Thank you,
12 Mr. Pernell. I'll move on.

13 This question relates to the gas leak
14 also, so I'll move on. Sorry, Mr. Pernell.

15 BY INTERVENOR SARVEY:

16 Q Since September 11th, the Homeland
17 Security Office has issued warnings about
18 terrorist attacks on our natural gas pipelines and
19 electrical generating facilities. Are you
20 incorporating any additional security measures in
21 relation to the hazardous materials and the
22 natural gas at the GWF peaker plant?

23 A First off, I think that that's a
24 question for the applicant to answer, but staff
25 has indeed reviewed that issue. The staff is very

1 much aware of the concerns in the country since
2 September 11th. This is a different world now,
3 since that day. And yes, the Office of Homeland
4 Security has made, has issued some warnings about
5 natural gas pipelines, power plants, nuclear
6 plants, etc.

7 We have reviewed and evaluated the
8 handling of and storage and transportation of all
9 of the hazardous materials, including natural gas.
10 Let's take natural gas first. There are over 250
11 million miles of natural gas pipeline in the
12 United States, and there's probably more now
13 because I got that figure from a year ago. That's
14 a lot of gas pipelines.

15 And let's talk about the probability
16 that somehow, this particular short pipeline is
17 going to be targeted. The chances of that are
18 extremely remote, and it is a buried pipeline.
19 And so one has done what one can do, and while
20 terrorists tend to think out of the box, I think
21 I'd want to assure you that the chances that this
22 pipeline is going to be targeted are very, very
23 low.

24 When it comes to targeting a power plant
25 for any type of intentional sabotage, the

1 administrative as well as engineering controls
2 that are put in place to deal with accidental
3 releases can also handle an intentional release.
4 One of the things that I think that the applicant
5 should consider is having not just secondary
6 containment of their aqueous ammonia storage tank,
7 but tertiary containment, so that should there be
8 an intentional act of sabotage directed against
9 that tank, that there would be a collection
10 reservoir to collect and store any intentionally
11 caused release.

12 Now, they have a subsurface containment
13 vessel for the transfer pad -- That's between the,
14 to collect any spill from the delivery vehicle
15 transferring aqueous ammonia to the storage tank.
16 I would suggest that the applicant might want to
17 respond to your question and also respond to my
18 suggestion that they make some modification that
19 allows that subsurface storage tank to also
20 collect from the above-ground storage tank should
21 there be an intentional act.

22 Keep in mind that the accidental failure
23 of both walls of that storage tank, the chances of
24 that happening are astronomically low. But an
25 intentional act of sabotage, that's a different

1 matter. And maybe they would like to address that
2 at the proper time.

3 Q Is it possible to include that as a
4 condition of certification, those -- the measures
5 that you have suggested?

6 A It certainly is possible, and I'd like
7 to hear from the applicant on that.

8 PRESIDING COMMISSIONER PERNELL: Do you
9 have any further questions for the --

10 INTERVENOR SARVEY: Oh, yes, I do.

11 PRESIDING COMMISSIONER PERNELL: Go
12 ahead.

13 BY INTERVENOR SARVEY:

14 Q In the area, there's a lot of farmland
15 around and many times the farmers will be shooting
16 rodents and wild dogs. Is the double-walled tank
17 susceptible to gunshots? Is it invulnerable to
18 that, or --

19 A Well, that's a very interesting
20 question. I would certainly say yes. I'm hoping
21 that the farmers aren't using bazookas or
22 something --

23 Q Well, on my visit there I found two dead
24 dogs right next to the -- that's why I'm asking
25 that question.

1 A Yeah. We're talking about high-strength
2 steel tanks, double-walled.

3 Q So this probably is out of your area of
4 expertise, but can you give me an approximation of
5 what caliber it would take to puncture the side?

6 A I am definitely out of my area of
7 expertise.

8 Q Okay. Thank you, Doctor.

9 Previously you were discussing the
10 inspection schedule on the gas pipeline and you
11 said it is only inspected after 30 years, or was
12 that three years? I missed that.

13 A That would be after 30 years. After the
14 initial construction, pressure testing, and they
15 do test the wells and then put it into operation,
16 and then they'll test again after 30 years.

17 Q In your opinion, is that an appropriate
18 time frame, to wait 30 years to inspect that
19 pipeline?

20 A Yes, it is, and it is consistent, once
21 again, with guidelines that the Department of
22 Transportation Office of Pipeline Safety are
23 working on.

24 Q Has the applicant described his yearly
25 total usage of ammonia and do you know that

1 amount?

2 A The applicant has described that. I
3 don't know that off the top of my head.

4 Q You mentioned a training program to
5 train the applicant's workers in safety handling
6 and such, would that program be available for
7 public review as well?

8 A I'd have to defer to counsel on that.
9 That becomes a matter of compliance project
10 enforcement. Counsel has told me that she's not
11 aware either, but certainly some of the Energy
12 Commission has the answer to that, but we just
13 don't know.

14 Q Could I be provided that answer later,
15 is that possible?

16 MS. WILLIS: Your question was to
17 training programs?

18 INTERVENOR SARVEY: Was the applicant's
19 training program that Dr. Greenberg is suggesting
20 here, would that be open to public review?

21 MS. WILLIS: And that's regarding
22 safety?

23 INTERVENOR SARVEY: Yeah, regarding the
24 hazardous materials program.

25 MS. WILLIS: I'm not sure at this time,

1 just because I know --

2 INTERVENOR SARVEY: No, more on
3 hazardous materials out there.

4 MS. WILLIS: Right, and I'm not sure
5 about how safety programs are being handled, as
6 far as public information at this point in time,
7 and that's the only reason why I'm holding off on
8 answering for sure that it would be open to the
9 public.

10 INTERVENOR SARVEY: Thank you, counsel.
11 That's all I have. Thank you, Doctor.

12 THE WITNESS: You're welcome.

13 HEARING OFFICER TOMPKIN: Anything
14 further for this witness?

15 MR. GRATTAN: If no one else has
16 questions, I have just one.

17 Good morning, Dr. Greenberg.

18 THE WITNESS: Good morning.

19 CROSS EXAMINATION

20 BY MR. GRATTAN:

21 Q One question is based on your knowledge
22 of or your general knowledge of the use of ammonia
23 in agriculture and in California agriculture, and
24 given the location of the Tracy plant, would this
25 be the first introduction of aqueous ammonia into

1 the Tracy area?

2 A No, not at all. And, as a matter of
3 fact, the agricultural community likes to use
4 anhydrous ammonia even more often than they use
5 aqueous ammonia. In my search of accidental
6 releases, I couldn't find any for aqueous ammonia,
7 but I found a lot of them, mostly involving
8 agricultural uses in California, of anhydrous
9 ammonia, where the tank literally leaks on site or
10 there is an accident on a road or highway.

11 Q Thank you.

12 MR. GRATTAN: That's all I have.

13 (Thereupon, the witness was
14 excused from the stand.)

15 PRESIDING COMMISSIONER PERNELL:

16 Mr. Grattan, it was suggested that the question be
17 asked of the applicant in relationship to having
18 an additional safeguard besides the double tank.
19 Are you in a position to address that?

20 MR. GRATTAN: Yes, I am in a position to
21 address that. I'd like to do it in two parts.
22 One, first I'd like to -- our witness, Mr. Morgan,
23 to address his thoughts and conclusions on
24 probability, and then I'd like to give the
25 microphone to Doug Wheeler, who can speak to the

1 issue of tertiary confinement.

2 Is that acceptable?

3 PRESIDING COMMISSIONER PERNELL: Yes, as
4 long as it's not redundant.

5 MR. GRATTAN: Absolutely not. The only
6 thing redundant is the protective walls here.

7 (Laughter.)

8 Whereupon,

9 JOE MORGAN

10 Was called as a previously duly sworn witness
11 herein and was examined and testified as follows:

12 DIRECT TESTIMONY

13 THE WITNESS: I would like to agree that
14 the aqueous ammonia is a non-flammable liquid, so
15 that if someone did crash a vehicle into it, for
16 example, you don't end up with an explosion from
17 the aqueous ammonia. You may have a fire from the
18 fuel on the vehicle, for example, but the aqueous
19 ammonia itself is not going to burst into flame.

20 I'd also agree that the likelihood of
21 that happening is a very low probability. One,
22 there are a lot of power plants around, and two, I
23 would suspect that -- I wouldn't want to presume
24 what a terrorist might want to do, but they seem
25 to operate on the principle that they like

1 publicity, so I would think that there are much
2 higher profile targets around. The governor, for
3 example, has mentioned the Golden Gate Bridge at
4 one point, that would be a more likely target than
5 would be a measly 9,000-gallon aqueous ammonia
6 tank in a power plant.

7 PRESIDING COMMISSIONER PERNELL: Yeah,
8 we certainly don't want to give them any suggested
9 targets, so --

10 THE WITNESS: I agree. I agree, that
11 was in the newspaper. That's not my idea.

12 And finally, there hasn't been any
13 history of anything like that happening, so I'm
14 not sure how you go about calculating a meaningful
15 statistical number to come up with a probability
16 of something like that happening.

17 (Thereupon, the witness was
18 excused from the stand.)

19 HEARING OFFICER TOMPKIN: You may
20 continue.

21 PRESIDING COMMISSIONER PERNELL: The
22 issue on the additional safeguards --

23 MR. GRATTAN: Yes, if I could finish the
24 second half of our response here, I'd like to
25 bring Mr. Wheeler up first.

1 Can he be sworn in, please?

2 HEARING OFFICER TOMPKIN: And since
3 Mr. Wheeler will be providing testimony, he needs
4 to be sworn.

5 Whereupon,

6 DOUGLAS WHEELER

7 Was called as a witness herein and, after first
8 being duly sworn, was examined and testified as
9 follows:

10 DIRECT TESTIMONY

11 THE WITNESS: I'm Doug Wheeler of GWF.
12 We did receive a data request from Irene Sundberg
13 dealing with the world we live in after 9/11. We
14 did provide as a response to that the security
15 measures that GWF has implemented at its existing
16 facilities and would implement at the proposed
17 facility that deal with that issue.

18 In addition to that, we have looked at
19 additional I think it was described as tertiary
20 containment to the double-walled storage tank.
21 The double-walled storage tank is located
22 immediately adjacent to the concrete truck
23 unloading pad, and the subsurface spill
24 containment structure.

25 We have looked at and we feel that we

1 can, with a slight modification to the design,
2 make sure that if there is a catastrophic failure
3 of the second wall on that double-walled tank,
4 that the contents of that tank would flow into the
5 subsurface containment. So in that very unlikely
6 event, the subsurface containment structure would
7 be providing containment for the spill that
8 Dr. Greenberg described, as well as the tertiary
9 containment, should there be a catastrophic
10 failure of the double-walled tank.

11 PRESIDING COMMISSIONER PERNELL: Thank
12 you.

13 INTERVENOR SARVEY: The two exhibits
14 that I offered to supply Mr. Greenberg for his
15 analysis on the future school siting and such so
16 he can plan that route I have located and I'd like
17 to present to him. They were on my original
18 exhibit list, exhibit seven and eight.

19 THE WITNESS: Just one further comment,
20 and we would have no problem accepting a condition
21 to that effect.

22 PRESIDING COMMISSIONER PERNELL: Thank
23 you.

24 (Thereupon, the witness was
25 excused from the stand.)

1 HEARING OFFICER TOMPKIN: Let me first I
2 guess go ahead and mark this exhibit that
3 Mr. Sarvey has provided to me. It's two folders
4 and I'm going to mark them collectively as
5 Exhibit 40 for identification. And one is labeled
6 South Schulte Specific Plan, and the other one is
7 Tracy Hills Specific Plan. Those documents will
8 be collectively marked as Exhibit 40 for
9 identification.

10 (Thereupon, the above-referenced
11 document was marked as Staff's
12 Exhibit 40 for identification.)

13 HEARING OFFICER TOMPKIN: All right.
14 Ms. Willis?

15 MS. WILLIS: Thank you. At this time
16 staff would like to move the Hazardous Materials
17 sections of the staff assessment and staff
18 supplement, previously marked Exhibits Four and
19 17, into the record.

20 HEARING OFFICER TOMPKIN: Is there any
21 objection? Hearing no objection, that evidence
22 will be admitted.

23 (Thereupon, the above-referenced sections of
24 documents marked as Staff's Exhibits 4 & 17 for
25 identification, were received into evidence.)

1 MR. GRATTAN: At this point applicant
2 would also like to move this testimony and
3 exhibits as follows, after these are numbered.

4 HEARING OFFICER TOMPKIN: You may
5 proceed.

6 APPLICANT COUNSEL KARP: Okay. In this
7 case, applicant is sponsoring the next numbered
8 exhibit -- Oh, I'm sorry, no, this is already in
9 Exhibit One, Section 8.12 of the original
10 application dated August 2001. That is already
11 another portion of Exhibit One. And a new
12 exhibit, which -- Are we 41 or 42 now?

13 PRESIDING COMMISSIONER PERNELL: We're
14 now on 41.

15 APPLICANT COUNSEL KARP: Okay. Mark as
16 new Exhibit 41, please, Data Response 26 from the
17 applicant, November 9th, 2001.

18 HEARING OFFICER TOMPKIN: That document
19 will be so marked.

20 (Thereupon, the above-referenced
21 document was marked as Staff's
22 Exhibit 41 for identification.)

23 HEARING OFFICER TOMPKIN: Is there any
24 objection to the evidence that is being offered on
25 behalf of the applicant?

1 MR. GRATTAN: I'm not going to object to
2 our own evidence here, but I couldn't grab the
3 microphone in time. I think at this time we'd
4 also like to enter into the record our data
5 response to Mrs. Sundberg's inquiry as to GWF's
6 security procedures, and that, I believe that was
7 answered on February 6th, and I believe the
8 request was February 3rd.

9 HEARING OFFICER TOMPKIN: Is there any
10 objection to that document? Then that document
11 will be --

12 INTERVENOR SARVEY: I would just like to
13 make a comment that the applicant has been very
14 good at providing answers to data requests.

15 MR. GRATTAN: Thank you very much.

16 HEARING OFFICER TOMPKIN: Okay. The
17 data response by Ms. Sundberg will be marked as
18 Exhibit 42 for identification.

19 (Thereupon, the above-referenced
20 document was marked as Staff's
21 Exhibit 42 for identification.)

22 HEARING OFFICER TOMPKIN: Is there any
23 objection to Exhibit 42?

24 MS. WILLIS: None.

25 HEARING OFFICER TOMPKIN: Hearing no

1 objection, Exhibit 42 as well as the remainder of
2 the documents offered on behalf of applicant will
3 be admitted in evidence.

4 (Thereupon, the above-referenced documents,
5 marked as Staff's Exhibits 40-42 for
6 identification, were received into evidence.)

7 HEARING OFFICER TOMPKIN: All right.

8 Now, the City of Tracy, were you planning on
9 offering evidence in this hearing?

10 INTERVENOR REED: No.

11 HEARING OFFICER TOMPKIN: Ms. Sundberg?

12 INTERVENOR SUNDBERG: No, not at this
13 time.

14 HEARING OFFICER TOMPKIN: Then we will
15 move on to the next topic section, which is waste
16 management. But before doing that, we will go
17 ahead and close out the haz mat section. That
18 part of the proceedings is now closed.

19 Mr. Grattan?

20 MR. GRATTAN: Yes. The applicant would
21 now like to call again Mr. Joe Morgan.

22 Whereupon,

23 JOE MORGAN

24 Was called as a previously duly sworn witness
25 herein and was examined and testified as follows:

1 MR. GRATTAN: Mr. Morgan has previously
2 been sworn, and we're ready to proceed.

3 DIRECT EXAMINATION

4 BY MR. GRATTAN:

5 Q Can you give your address and current
6 employment and role in the project with respect to
7 waste management.

8 A My name is Joe Morgan. I'm a senior
9 project manager with URS, Oakland. The waste
10 management section of the application for
11 certification and subsequent parts of the document
12 were prepared under my direction.

13 Q And your qualifications have previously
14 been given, and I presume you stated your waste
15 management qualifications as well.

16 A I did.

17 Q Did you prepare testimony as part of the
18 applicant's package on waste management?

19 A No, that was submitted by Dr. Angela
20 Liang.

21 Q Okay. Did you review and supervise the
22 preparation of that testimony?

23 A Yes, I did.

24 Q Thank you, and are you -- can you affirm
25 that testimony under oath?

1 A Yes, I can.

2 Q Do you have any corrections or
3 modifications?

4 A No, I do not.

5 Q And are you sponsoring any exhibits?

6 A Yes. I'd like to sponsor Section 8.13
7 of the application for certification, which was
8 submitted on August 2001. And also Data Response
9 67, which was submitted on November 9th, 2001.
10 And also, the waste management plan for the TPP
11 project.

12 Q Thank you, and could you please
13 summarize your testimony.

14 A I reviewed the waste management issues
15 associated with the construction and operation of
16 the TPP. I have concluded that with the
17 imposition of the appropriate mitigation measures,
18 the project will have no significant impact on
19 public health, safety or the environment.
20 Mitigation measures include the following:

21 Construction and operations personnel
22 will receive training on waste management. A
23 waste management plan has been filed with the
24 county. Waste will be recycled to the extent
25 practical. Waste will be disposed of off site at

1 appropriate disposal facilities. Hazardous waste
2 will be stored on site for less than 90 days
3 within secondary containment. Licensed
4 transporters will be used for hazardous waste
5 shipments.

6 A spill control plan will be developed
7 for the facility, and a waste minimization program
8 will be developed and implemented. Waste disposal
9 facilities appropriate for the various waste
10 generated were called to confirm that they have
11 adequate capacity for the TPP facility waste, and
12 they do. The project will comply with all
13 applicable laws, ordinances, regulations, and
14 standards.

15 Q Thank you, and could you briefly tell us
16 what kinds of waste will be produced by the plant,
17 both hazardous and regular?

18 A During construction there will be a
19 number of construction debris type materials
20 generated, typically small amounts of waste oil
21 and what-not from the construction equipment.
22 Also, some wood, waste concrete, various excess
23 items of insulation, those kinds of things, which
24 are normal construction debris.

25 During operation, the facility will

1 produce small amounts of waste oil to be recycled
2 off site. About every five years, I believe, the
3 lubrication oil for the turbines will be changed
4 out. That will be recycled off site. About every
5 three to five years the SCR catalyst will end its
6 useful life and that will be replaced, and it will
7 also be recycled off site.

8 Also, maybe small amounts of paint cans
9 and things like that, just normal routine
10 maintenance items will be disposed of off site as
11 well.

12 Q Thank you very much.

13 MR. GRATTAN: The witness is ready for
14 cross examination.

15 HEARING OFFICER TOMPKIN: Does staff
16 wish to question this witness?

17 MS. WILLIS: We have no questions at
18 this time.

19 HEARING OFFICER TOMPKIN: Would any of
20 the intervenors wish to question this witness?
21 Ms. Sundberg?

22 INTERVENOR SUNDBERG: Not at this time.

23 HEARING OFFICER TOMPKIN: All right.
24 Mr. Sarvey?

25 INTERVENOR SARVEY: Yeah.

1 CROSS EXAMINATION

2 BY INTERVENOR SARVEY:

3 Q Has the county of Stockton approved your
4 waste management program at this time?

5 A I believe you're referring to San
6 Joaquin County?

7 Q I'm sorry, yes, the county of San
8 Joaquin.

9 A Yes, they have.

10 Q They have approved it?

11 A Yes.

12 Q Thank you. What company did you contact
13 to dispose of your hazardous waste?

14 A I believe we contacted two: Chem Waste
15 Management in Kettleman Hills, and Safety Clean's
16 facility at Buttonwillow.

17 Q Sorry, what was that second one?

18 A Safety Clean's facility at Buttonwillow,
19 California.

20 Q Did you, in your search for someone to
21 dispose of this waste, contact the Delta Disposal,
22 Tracy Delta Disposal?

23 A I don't recall that we did.

24 Q You said that the SCR catalyst has a
25 useful life of three years. Can you describe the

1 hazardous material that is comprised in these
2 catalysts, or what these catalysts are comprised
3 of?

4 A Typically, the catalysts are heavy
5 metals, which are attached in very thin amounts to
6 an inert material, aluminum oxide, something like
7 that. These metals catalyze the reaction of the
8 ammonia, the aqueous ammonia with the nitrous
9 oxides. And eventually over time they lose their
10 potency, if you will, and they have to be
11 replaced. They would be, as I said earlier,
12 recycled off site.

13 Q Is there any recycling done in relation
14 to those SCR catalysts?

15 A I believe so, yes.

16 Q I understand that the SCONOX technology
17 requires catalyst replacement only once every
18 seven years. Would that reduce the amount of
19 hazardous material that you would have to dispose
20 of?

21 A I really don't know anything about the
22 SCONOX system, so I can't comment on that.

23 INTERVENOR SARVEY: Thank you.

24 HEARING OFFICER TOMPKIN: Is there
25 anything further for this witness? Mr. Grattan?

1 MR. GRATTAN: Yes. At this point we
2 would like to move into evidence the testimony of
3 Angela Liang, sponsored by this witness, Joe
4 Morgan, and the following exhibits.

5 APPLICANT COUNSEL KARP: In addition to
6 the testimony on waste management, we'd like to
7 have the following exhibits introduced into
8 evidence:

9 Section 8.13 of the original
10 application, August 2001. That application is
11 already Exhibit One. A new exhibit, which will be
12 marked as Number 43, Data Response 67, dated
13 November 9th, 2001.

14 HEARING OFFICER TOMPKIN: The Data
15 Response 67 will be marked as Exhibit 43 for
16 identification.

17 (Thereupon, the above-referenced
18 document was marked as Staff's
19 Exhibit 43 for identification.)

20 MR. GRATTAN: We have one more item of
21 evidence that we would like to move in, and that
22 is the applicant's Construction Demolition Debris
23 Diversion Plan and Solid Waste Operation Plan,
24 which was submitted to the county.

25 HEARING OFFICER TOMPKIN: And is that --

1 MR. GRATTAN: And that would be Number
2 44.

3 HEARING OFFICER TOMPKIN: And could you
4 state the title of that for me again? The
5 construction --

6 MR. GRATTAN: It is the Demolition
7 Debris Diversion Plan -- Excuse me, let me back
8 up. It's the Construction Demolition Debris
9 Diversion Plan and Solid Waste Operation Plan.

10 HEARING OFFICER TOMPKIN: And that's one
11 document?

12 MR. GRATTAN: That is one document.

13 HEARING OFFICER TOMPKIN: And it's
14 previously docketed?

15 MR. GRATTAN: And it's been previously
16 docketed and submitted and approved by the county.

17 HEARING OFFICER TOMPKIN: All right.
18 The Construction Demolition Debris Diversion Plan
19 and Solid Waste Plan will be marked as Exhibit 45
20 (sic) for identification.

21 (Thereupon, the above-referenced
22 document was marked as Staff's
23 Exhibit 44 for identification.)

24 HEARING OFFICER TOMPKIN: Is there any
25 objection to the --

1 MR. GRATTAN: I think it's 44 --

2 HEARING OFFICER TOMPKIN: -- evidence
3 that's being offered on behalf of applicant at
4 this time? Hearing no objection --

5 MR. GRATTAN: Excuse me. We have that
6 numbered as Exhibit 44?

7 HEARING OFFICER TOMPKIN: Yes, you're
8 correct.

9 MR. GRATTAN: Okay.

10 HEARING OFFICER TOMPKIN: That is
11 Exhibit 44. So the Construction Demolition Plan
12 will be marked as Exhibit 44. Hearing no
13 objection, the testimony sponsored by Mr. Morgan
14 as well as Exhibits 41 (sic), 42 (sic), 43 and 44
15 will be admitted in evidence.

16 (Thereupon, the above-referenced documents,
17 marked as Staff's Exhibits 43-44 for
18 identification, were received into evidence.)

19 MR. GRATTAN: Thank you.

20 HEARING OFFICER TOMPKIN: All right.
21 Then we'll proceed to staff's witness.

22 MS. WILLIS: Thank you. At this time
23 staff calls Dr. Alvin Greenberg, and Dr. Greenberg
24 has been previously sworn, and his qualifications
25 were stated earlier.

1 Whereupon,

2 ALVIN GREENBERG

3 Was called as a previously duly sworn witness
4 herein and was examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MS. WILLIS:

7 Q Could you please state your name for the
8 record.

9 A Alvin Greenberg.

10 Q And did you prepare the testimony
11 entitled Waste Management in the staff assessment?

12 A Yes.

13 Q Was a statement of your qualifications
14 attached to your testimony?

15 A Yes.

16 Q And do you have any changes or
17 corrections to your testimony?

18 A No.

19 Q Do the opinions contained in your
20 testimony represent your best professional
21 judgment?

22 A Yes.

23 Q Were you present to hear the applicant's
24 testimony just moments ago?

25 A Yes.

1 Q Do you have anything to add or change in
2 that testimony?

3 A No. I'll just briefly summarize my
4 conclusions, in that there would be no significant
5 impact on waste management facilities from the
6 hazardous and non-hazardous waste that will be
7 generated and handled by this facility. There
8 will be no impact on public health, and I find
9 that it would comply with all laws, ordinances,
10 regulations, and standards.

11 Q Thank you. Does that conclude your
12 testimony?

13 A Yes.

14 MS. WILLIS: This witness is open for
15 cross examination.

16 HEARING OFFICER TOMPKIN: Does applicant
17 wish to examine the witness?

18 MR. GRATTAN: (No audible response.)

19 HEARING OFFICER TOMPKIN: No, all right.

20 Did you have a question?

21 PRESIDING COMMISSIONER PERNELL: Oh,
22 just let the record reflect that applicant said
23 no, and you did so very properly.

24 HEARING OFFICER TOMPKIN: All right.

25 Mr. Sarvey?

1 CROSS EXAMINATION

2 BY INTERVENOR SARVEY:

3 Q Were there any significant impacts
4 identified that required any mitigation measures,
5 Dr. Greenberg?

6 A Well, the mitigation measures proposed
7 here are really in the form of the proposed
8 conditions of certification. And they're not so
9 much mitigation as they are instructions to
10 prepare and submit certain waste management plans
11 to ensure that what the applicant is proposing to
12 do will indeed be done.

13 Q So there will be oversight on those
14 mitigation measures; is that --

15 A Yes, indeed.

16 Q Okay, and is there a plan developed for
17 that oversight and who will conduct that
18 oversight?

19 A Once again, it's conducted by the
20 compliance project manager of the California
21 Energy Commission, and that's a different
22 department from who I consult for.

23 Q Is there any periodic inspection to make
24 sure that the waste management practices are being
25 followed?

1 A My understanding is that there are
2 periodic inspections by compliance project
3 managers of all CEC-certified power plants. I
4 don't know the schedule of inspections, but I do
5 know that exists and perhaps someone else at the
6 CEC staff can answer that more specifically.

7 INTERVENOR SARVEY: Do we have anybody
8 available to answer that?

9 MS. WILLIS: No, we do not.

10 INTERVENOR SARVEY: Okay. Thank you,
11 Doctor.

12 THE WITNESS: You're welcome.

13 HEARING OFFICER TOMPKIN: Are there any
14 other questions for this witness? Seeing none,
15 Ms. Willis?

16 MS. WILLIS: At this time staff would
17 like to move the section of the staff assessment
18 entitled Waste Management into the record.

19 HEARING OFFICER TOMPKIN: Is there any
20 objection? Hearing no objection, the section on
21 Waste Management from the staff assessment will be
22 moved in evidence.

23 (Thereupon, the above-referenced section of
24 the document marked as Staff's Exhibit 4 for
25 identification was received into evidence.)

1 HEARING OFFICER TOMPKIN: Did the City
2 of Tracy or Ms. Sundberg plan to offer testimony
3 in this area?

4 INTERVENOR REED: No.

5 HEARING OFFICER TOMPKIN: All right.

6 (Thereupon, the witness was
7 excused from the stand.)

8 HEARING OFFICER TOMPKIN: Then we will
9 close the record on the Waste Management section
10 at this time.

11 And we will proceed to the next topic
12 area, and that topic area is Traffic and
13 Transportation, and it was previously identified
14 on the schedule as being a topic area that would
15 be covered by the submission of a declaration. So
16 we'll do that at this time.

17 We'll go off the record briefly.

18 (Thereupon, a recess was held
19 off the record.)

20 HEARING OFFICER TOMPKIN: We're back on
21 the record. Mr. Grattan?

22 MR. GRATTAN: Applicant is prepared to
23 present the testimony by declaration of Amy
24 Walston, and this testimony relates to traffic and
25 transportation. And I have on my right Mr. Dave

1 Stein, who has been responsible for the
2 preparation of the application and has reviewed
3 this testimony. And if we swear him in to sponsor
4 it, we're ready to proceed.

5 HEARING OFFICER TOMPKIN: Thank you.

6 Whereupon,

7 DAVID STEIN

8 Was called as a witness herein and, after first
9 being duly sworn, was examined and testified as
10 follows:

11 DIRECT EXAMINATION

12 BY MR. GRATTAN:

13 Q Could you give your name, address,
14 current employment, role in the project, and
15 specifically, your role with respect to traffic
16 and transportation.

17 A Yes. My name is David Stein. I'm a
18 program director in the Environmental Services
19 Department in URS Corporation in Oakland,
20 California. My role in the project was to direct
21 the preparation of the application for
22 certification and all of the supporting documents
23 and data responses, including supervision of the
24 preparation of the traffic and transportation
25 section of the application and its supplementary

1 materials.

2 Q And did that section of the application
3 indicate that the project would comply with all
4 laws, ordinances, regulations, and standards?

5 A Yes, it did.

6 Q And did that section of the application
7 provide that as conditioned or conclude that as
8 conditioned by the CEC staff report, the project's
9 traffic and transportation impacts would cause no
10 significant impacts to the environment?

11 A Yes.

12 MR. GRATTAN: We would now move the
13 testimony of Amy Walston into the record, and
14 sponsoring --

15 APPLICANT COUNSEL KARP: Applicant's
16 exhibits on traffic and transportation, Section
17 8.10 of the original application dated August
18 2001. That application is already admitted as
19 Exhibit One. Section 3.10 of the supplement to
20 the application. That is already Exhibit Two. A
21 new exhibit, which I believe we're up to Number
22 45?

23 HEARING OFFICER TOMPKIN: That's
24 correct.

25 APPLICANT COUNSEL KARP: Data Responses

1 28 through 37, November 9th, 2001.

2 HEARING OFFICER TOMPKIN: That will be
3 marked as Exhibit 45 for identification.

4 (Thereupon, the above-referenced
5 document was marked as Staff's
6 Exhibit 45 for identification.)

7 APPLICANT COUNSEL KARP: And then
8 Sections 2.5 and Appendix E of the Wet Weather
9 Construction Contingency Plan dated December 2001.
10 That plan has already been admitted as Exhibit 12.

11 HEARING OFFICER TOMPKIN: Is there any
12 objection to admission of this evidence? Hearing
13 no objection, the testimony sponsored on behalf of
14 Ms. Walston and the exhibits identified by counsel
15 will be admitted in evidence.

16 (Thereupon, the sections and above-referenced
17 document marked as Staff's Exhibit 45 for
18 identification were received into evidence.)

19 HEARING OFFICER TOMPKIN: Staff?

20 MS. WILLIS: Yes. Staff is under the
21 understanding that we would be sponsoring the
22 testimony by written declaration.

23 HEARING OFFICER TOMPKIN: Yes.

24 MS. WILLIS: We do have the written
25 declaration of David Young and his qualifications

1 attached to the testimony in the staff assessment
2 for traffic and transportation and we'd like to
3 move that into evidence.

4 INTERVENOR SARVEY: Will we be provided
5 an opportunity to cross examine the witness?

6 HEARING OFFICER TOMPKIN: If you want
7 to. That was --

8 INTERVENOR SARVEY: Yes, I --

9 HEARING OFFICER TOMPKIN: We sponsored
10 it by declaration.

11 INTERVENOR SARVEY: Oh, I'm sorry, I
12 didn't understand that procedure.

13 HEARING OFFICER TOMPKIN: There's really
14 no cross examination. We make available an
15 individual to answer general questions, but the
16 technical person is not here.

17 INTERVENOR SARVEY: And so is that area
18 closed?

19 HEARING OFFICER TOMPKIN: Since you
20 didn't understand, I will permit you to ask
21 questions.

22 INTERVENOR SARVEY: Okay.

23 HEARING OFFICER TOMPKIN: General
24 questions of Mr. Stein.

25 INTERVENOR SARVEY: Yeah, very general.

1 Sure.

2 CROSS EXAMINATION

3 BY INTERVENOR SARVEY:

4 Q Under the testimony provided here, it
5 states that "I conclude, with the imposition of
6 appropriate mitigation, the project will not have
7 a significant impact, either individually or
8 cumulatively on traffic and transportation."

9 Did you identify any significant impacts
10 that were -- that needed mitigation?

11 MR. GRATTAN: These questions are -- I
12 guess we can -- We've submitted our testimony, and
13 I thought we were through, but --

14 INTERVENOR SARVEY: Sorry, John.

15 MR. GRATTAN: -- Mr. Stein, to the best
16 of his ability, will answer these questions.

17 INTERVENOR SARVEY: Thank you.

18 MR. GRATTAN: He didn't prepare the
19 testimony.

20 INTERVENOR SARVEY: I'm sorry.

21 HEARING OFFICER TOMPKIN: These are
22 supposed to be very general questions, as was
23 indicated.

24 INTERVENOR SARVEY: Yeah, I just wanted
25 to know if there were any impacts that needed to

1 be mitigated.

2 HEARING OFFICER TOMPKIN: All right.

3 THE WITNESS: I am not aware,
4 Mr. Sarvey, that any significant impacts to local
5 roadways or the circulation system were identified
6 as a result of the proposed Tracy peaker project.
7 The amount of traffic that's generated during the
8 construction and operation of this facility is
9 very small relative to existing roadway
10 conditions.

11 I believe that the staff has proposed
12 some fairly standard conditions of the applicant
13 that include the requirement for a -- the
14 preparation of a transportation plan during
15 construction of the facility. That's the period
16 of time when the level of traffic generation would
17 be highest. But even under those conditions, no
18 significant impacts were identified, either by the
19 applicant or by the staff in their analysis.

20 BY INTERVENOR SARVEY:

21 Q Has your traffic and transportation
22 study included the future planned developments,
23 Tracy Hills and South Schulte developments and the
24 increased traffic that would be expected from
25 those developments?

1 A I don't know.

2 PRESIDING COMMISSIONER PERNELL: If you
3 don't know, you can just state you don't know.

4 THE WITNESS: I don't know.

5 BY INTERVENOR SARVEY:

6 Q Will you be improving Schulte Road and
7 your access to your entry road for your -- to
8 accommodate the fact that you will be shipping the
9 ammonia along that route?

10 A The access road will be -- will abut to
11 Schulte Road, and that turn into Schulte Road will
12 meet the local requirements for roads.

13 Q Will there be a turnout provided? Are
14 you aware of anything of that nature?

15 A I think there will be a standard
16 entrance into that facility, as there would be for
17 any other access road.

18 INTERVENOR SARVEY: Thank you,
19 Mr. Stein.

20 HEARING OFFICER TOMPKIN: All right.
21 Thank you.

22 INTERVENOR REED: Ms. Tompkin, I'm
23 sorry, I didn't understand the process either, and
24 I do have a couple of general questions.

25 HEARING OFFICER TOMPKIN: Okay. Well,

1 let me do --

2 MR. GRATTAN: That's fine.

3 HEARING OFFICER TOMPKIN: We'll permit
4 it.

5 CROSS EXAMINATION

6 BY INTERVENOR REED:

7 Q Mr. Stein, in terms of your statement
8 regarding compliance with LORS, are we talking
9 about the LORS of San Joaquin County only or are
10 we including the City of Tracy here, or are we
11 also including the state?

12 A I'm referring to applicable laws,
13 ordinances, regulations, and standards. My
14 understanding is that the facility would reside
15 within San Joaquin County, and it would comply
16 with county ordinances, regulations and standards.

17 Q Then I think my second question is
18 perhaps the same as Mr. Sarvey's, and that is did
19 you take into consideration future City of Tracy
20 plans in the analysis, and I think you stated you
21 don't know, but I think that's something we would
22 like a response to at some point.

23 MR. GRATTAN: If I can consult with
24 Mr. Stein, maybe -- Excuse me, this is John
25 Grattan. If I can consult with Mr. Stein off the

1 record, maybe we can provide an answer to that
2 question.

3 HEARING OFFICER TOMPKIN: We'll go off
4 the record briefly.

5 (Thereupon, a recess was held
6 off the record.)

7 HEARING OFFICER TOMPKIN: We're back on
8 the record.

9 THE WITNESS: In response to your
10 question, I would offer the observation that both
11 the Tracy Hills development and the South Schulte
12 development are planned developments that are
13 sometime in the future. The construction that's
14 planned will have been completed and it will have
15 commenced operation before any of that development
16 proceeds. So there's no possibility for there to
17 be any overlap in the construction traffic
18 generation that would have any cumulative impact
19 on the city of Tracy or the local roadway systems.

20 The traffic generation during operation
21 of this facility is very, very small. There are
22 only -- There is only one permanent employee at
23 the facility when it's in operation. And there
24 are minor amounts of deliveries associated with
25 its operation -- very, very limited traffic flow,

1 so no significant impacts during operation.

2 INTERVENOR REED: So just to clarify,
3 the answer is no.

4 THE WITNESS: The answer is no. No,
5 there would not be any cumulative impacts from
6 those proposed developments.

7 BY INTERVENOR REED:

8 Q No, that wasn't my question. My
9 question was did you take into consideration
10 future City of Tracy plans?

11 A I believe that those proposed plans were
12 considered, and what I'm stating in response to
13 your question is that the proposed developments
14 are far in the future, and would not have the
15 possibility of having any significant cumulative
16 impact. And that is outlined in my cumulative
17 impact testimony.

18 HEARING OFFICER TOMPKIN: Thank you,
19 Mr. Stein.

20 Now we'll go back to Ms. Willis who was
21 in the process of sponsoring the testimony?

22 MS. WILLIS: Right. As I stated
23 earlier, we had -- after reading the order that it
24 said that the parties would present testimony in
25 the form of sworn written declarations in those

1 technical areas. We do not have a witness to
2 sponsor these technical areas that have been
3 identified as being able to be offered by written
4 declaration.

5 But we have provided written
6 declarations and the resumes in the staff
7 assessment, so we would like to enter the
8 testimony of David Young in Traffic and
9 Transportation that was in the staff assessment.

10 HEARING OFFICER TOMPKIN: All right.
11 And this was an area in which it was indicated it
12 would be submitted by declaration. Is there any
13 objection to the testimony, admission of the
14 testimony of David Young? Hearing no objection,
15 the testimony of David Young will be admitted in
16 evidence.

17 Mr. Sarvey?

18 INTERVENOR SARVEY: Will we be allowed
19 to ask some general questions?

20 HEARING OFFICER TOMPKIN: We did specify
21 that a project manager would be available for very
22 general questions, non-technical questions in the
23 area.

24 MS. WILLIS: And, just as a point of
25 clarification, the questions you just previously

1 asked are not of the general nature for this
2 witness. She was a project manager and did not do
3 the technical analysis.

4 INTERVENOR SARVEY: Is it possible for
5 me to receive answers to these questions at a
6 later date?

7 HEARING OFFICER TOMPKIN: Well, why
8 don't we proceed this way. What we'll do is we'll
9 have the project manager sworn in, and --

10 MS. WILLIS: I'm actually going to
11 object to that. She's not the witness in this
12 area, and I do not I do not want her to be sworn
13 in and provide testimony under oath on a topic
14 that she did not prepare.

15 We did write a response to the schedule
16 to indicate that if anybody needed to have a
17 witness here that we would be happy to provide
18 them, but we would need to know that in advance.
19 As I said, she is the project manager which
20 basically is the administrator for compiling all
21 the project sections but did not perform the
22 analysis of this area, or any of the areas, or
23 supervise, as she just stated.

24 INTERVENOR SARVEY: Yeah. I understand
25 that, and Cheri looks kind of tired, so I don't

1 think I want to cross examine her, but is it
2 possible to get answers to my questions at a later
3 date? Written answers?

4 HEARING OFFICER TOMPKIN: We'll go off
5 the record for a moment.

6 INTERVENOR SARVEY: Okay, thank you.
7 (Thereupon, a recess was held
8 off the record.)

9 HEARING OFFICER TOMPKIN: We're back on
10 the record. The staff has objected to swearing in
11 Ms. Davis to provide answers to general questions.
12 That objection is noted, but the committee has
13 decided to go ahead and have Ms. Davis sworn in,
14 because the order did indicate that in the case of
15 testimony received by declaration, a project
16 manager or other person with general knowledge of
17 the testimony shall be available for questioning.

18 And I understand that maybe staff had a
19 different interpretation of that. So what I'm
20 going to do is go ahead and have Ms. Davis sworn
21 in. We'll give staff an opportunity to explain
22 the scope or explain Ms. Davis's job as a project
23 manager, and then the questioning can be limited
24 to the scope of her job and her knowledge in that
25 position.

1 MS. WILLIS: Thank you. And, just for
2 the record, I do want to state that we did
3 understand that cross examination is a legal term
4 of art which means being sworn under oath and
5 being provided, and questioning in our mind, and,
6 as we tried to have clarified in our response to
7 the schedule, is not under oath and not sworn.
8 And that was our understanding, and we appreciate
9 that Ms. Davis will be allowed to explain her
10 role.
11 Whereupon,

12 CHERI DAVIS
13 Was called as a witness herein and, after first
14 being duly sworn, was examined and testified as
15 follows:

16 HEARING OFFICER TOMPKIN: You may
17 proceed, Ms. Willis. Well, did you want to ask
18 her --

19 MS. WILLIS: I don't have any questions
20 for Ms. Davis.

21 HEARING OFFICER TOMPKIN: All right.
22 Well, why don't we have Ms. Davis explain her role
23 so Mr. Sarvey will understand the scope of her
24 knowledge.

25 THE WITNESS: All right.

1 DIRECT TESTIMONY

2 THE WITNESS: My role as project manager
3 is to ensure that the project goes -- that the
4 project review process goes through the required
5 procedures throughout the process, to conduct
6 workshops, and as far as reviewing the testimony
7 of staff, I ensure consistency with other
8 sections, and ensure that the document is
9 produced, as is required.

10 INTERVENOR SARVEY: As I mentioned
11 before, I would stipulate to written answers to my
12 questions because I don't think Ms. Davis will
13 have the knowledge to answer the questions, but
14 I'm happy to go forward with whatever procedure
15 you suggest.

16 HEARING OFFICER TOMPKIN: Well, the
17 purpose of having these hearings is to get the
18 evidence into the record so that the committee can
19 consider it and make a recommendation to the
20 Commission. Allowing written answers and
21 responses extends that process, because then every
22 party has to have an opportunity to look at it and
23 respond, and there's no way to conclude it in a
24 final manner. We don't know how we can conclude
25 it, because everyone has to keep responding.

1 That's why everyone is here in a forum
2 together, so we can finalize this. What we'll
3 have you do is ask Ms. Davis the questions. If
4 she doesn't know, she can say she doesn't know,
5 but the evidence will be in the record because we
6 do have the written testimony available which
7 explains the process, and what -- how the
8 conclusions were reached in each technical area.
9 So we'll proceed that way.

10 INTERVENOR SARVEY: Thank you,
11 Ms. Tompkin.

12 HEARING OFFICER TOMPKIN: You may begin
13 your questioning.

14 CROSS EXAMINATION

15 BY INTERVENOR SARVEY:

16 Q Has the staff Traffic and Transportation
17 study included the future planned developments of
18 Tracy Hills and the South Schulte project?

19 A I would defer Mr. Sarvey to our
20 testimony.

21 Q Has the staff recommended that Schulte
22 Road be improved to provide a safe entry and exit
23 for the ammonia shipments?

24 A I cannot speak to that right now.

25 INTERVENOR SARVEY: Thank you, Cheri.

1 INTERVENOR REED: I just had one
2 question of clarification on Ms. Davis's role.

3 CROSS EXAMINATION

4 BY INTERVENOR REED:

5 Q Ms. Davis, you were the project manager
6 for the entire study, not just the traffic and
7 transportation; is that correct?

8 A That's correct.

9 INTERVENOR REED: Thank you.

10 HEARING OFFICER TOMPKIN: All right.

11 COMMISSIONER LAURIE: Ms. Tompkin, let
12 me offer a brief comment.

13 I understand what the problem is in
14 regards to trying to get your point across during
15 these formalized kinds of hearings, and it's a
16 problem that every intervenor faces in every case.
17 Having read the material, you know what it says,
18 most of the time, except for the air quality
19 stuff, in interpreted form.

20 (Laughter.)

21 COMMISSIONER LAURIE: What is often
22 challenging for an intervenor is if having read
23 it, you feel you can't attack the factual
24 statement, but you disagree with the conclusion or
25 you have other thoughts on the matter. You

1 sometimes feel restricted in being able to express
2 that. Now, if we were a board of supervisors and
3 we had a land project, you'd be able to stand up
4 there and say, well, this is what I think. But
5 this is a more formalized hearing, and it creates
6 a challenge for you to be able to do that.

7 Normally the way you would do that is in
8 closing argument, so that if there is a
9 transportation issue, you are really free to
10 disagree and we really want to know what your
11 thoughts are, and they need not necessarily be
12 technical data. You live here and you may know
13 better, so we want to know what you think. And we
14 have to give you the opportunity to express that
15 view.

16 And normally, the best way that's done
17 is in closing argument, when everything is in and
18 you have something to say about transportation,
19 you go, you know, I live here and this guy is
20 wrong and I think it would be better if this were
21 done. Absent that, we'd want to make sure that we
22 give you an opportunity to express yourself orally
23 as well.

24 But again, that's difficult to do and
25 not necessary to do through cross examination or

1 asking of witnesses, but we sure want to make sure
2 that you have an opportunity to give us what you
3 know. And it need not necessarily be done in this
4 formalized fashion.

5 INTERVENOR SARVEY: So in the closing
6 argument --

7 PRESIDING COMMISSIONER PERNELL: Come to
8 the mic, please.

9 INTERVENOR SARVEY: I'm sorry.

10 PRESIDING COMMISSIONER PERNELL: This is
11 information for everyone.

12 INTERVENOR SARVEY: Yeah. So in the
13 closing arguments, I'll be allowed to advance my
14 personal opinions, then?

15 COMMISSIONER LAURIE: Absolutely.

16 INTERVENOR SARVEY: Okay. And excuse my
17 ignorance of the procedure. The closing argument
18 comes after everything is closed and we all get an
19 opportunity to step to the mic and close?

20 COMMISSIONER LAURIE: Yes.

21 INTERVENOR SARVEY: Okay. Thank you,
22 Mr. Laurie.

23 HEARING OFFICER TOMPKIN: All right.

24 MS. WILLIS: Then staff would like to
25 move the section Traffic and Transportation into

1 the record.

2 HEARING OFFICER TOMPKIN: Is there any
3 objection? There being no objection, that section
4 will be admitted in evidence.

5 (Thereupon, the above-referenced document
6 section marked as Staff's Exhibit 4 for
7 identification was received into evidence.)

8 HEARING OFFICER TOMPKIN: We'll move to
9 the next section, which is Transmission System
10 Engineering, and that was also indicated as being
11 declaration testimony.

12 Mr. Grattan?

13 MR. GRATTAN: Yes. Actually, the
14 applicant presented its evidence on Transmission
15 System Engineering as part of the discussion on
16 Project Description, and Mr. Moore was there as a
17 witness the first night. I'm trying to think how
18 many days ago that was -- I'm getting my days and
19 nights confused. Mr. Moore is with us today, and
20 we'll offer him up for any cross examination
21 again.

22 HEARING OFFICER TOMPKIN: So there are
23 no additional declarations or information to be
24 provided at this time?

25 MR. GRATTAN: No. That was all included

1 again in Project Description, and he sponsored the
2 sections of our application dealing with
3 Transmission System Engineering, and also
4 Transmission Line Safety and Nuisance.

5 HEARING OFFICER TOMPKIN: All right.

6 Does anyone wish to question Mr. Moore?

7 INTERVENOR SARVEY: Are we covering both
8 topics or just the safety or --

9 HEARING OFFICER TOMPKIN: Well --

10 MR. GRATTAN: Maybe I could bring
11 Mr. Moore up here, in the interest of full
12 disclosure and in the interest of maximum public
13 input and we'll have him sworn in and I'm going to
14 ask him one question.

15 HEARING OFFICER TOMPKIN: Okay. Let me
16 ask, is there any objection to combining
17 Transmission System Engineering and Transmission
18 Line Safety and Nuisance, since this is --

19 INTERVENOR SARVEY: I would like to deal
20 with them separately.

21 INTERVENOR SUNDBERG: Separately.

22 HEARING OFFICER TOMPKIN: Separately?

23 All right.

24 PRESIDING COMMISSIONER PERNELL: I
25 thought you just requested to do them both.

1 Separately is fine.

2 HEARING OFFICER TOMPKIN: So we'll begin
3 with Transmission System --

4 INTERVENOR SARVEY: Whatever Mr. Pernell
5 would prefer.

6 PRESIDING COMMISSIONER PERNELL: We
7 could do them separately if that's your request.

8 HEARING OFFICER TOMPKIN: We need to
9 swear in Mr. Moore. Thank you.
10 Whereupon,

11 HAL MOORE

12 Was called as a witness herein and, after first
13 being duly sworn, was examined and testified as
14 follows:

15 DIRECT EXAMINATION

16 BY MR. GRATTAN:

17 Q Mr. Moore, can you give us your name and
18 address and role in the project and position at
19 GWF.

20 A Yes, I can. My name is Hal Moore.
21 Address is 4300 Railroad Avenue, Pittsburg,
22 California. And I am the engineering and
23 maintenance manager for GWF Power Systems. My
24 role in the project was to direct and supervise
25 the creation of the facility design, including the

1 transmission system engineering and the
2 transmission safety and nuisance.

3 Q And you previously have been sworn in
4 and testified and sponsored Exhibits -- and I
5 guess it was in the Facility Design section, not
6 the Project Description -- for Transmission System
7 Engineering?

8 A Yes, that is correct.

9 Q And do you remember which it was,
10 Facility Design, or --

11 A It was in Facility Design.

12 Q Thank you.

13 MR. GRATTAN: The witness is available
14 for cross examination. For the record, he has
15 been cross examined on this issue.

16 HEARING OFFICER TOMPKIN: Does staff
17 wish to question the witness?

18 MS. WILLIS: No, we don't.

19 HEARING OFFICER TOMPKIN: Mr. Sarvey?

20 CROSS EXAMINATION

21 BY INTERVENOR SARVEY:

22 Q I wish to address the PG&E re-rate, and
23 would that be more suited to the safety issue, or
24 would you like to address that now?

25 A No, the re-rate is actually more of a

1 design issue than a safety issue.

2 Q Okay. Thank you. Is it unusual for
3 PG&E to re-rate lines under these circumstances?

4 A No, sir, it's not.

5 Q Are you aware of any problems that could
6 be impacted downstream from re-rating of these
7 lines?

8 A When you request a re-rate from the
9 utility, the first thing they do, and where most
10 of the problems would arise, they would arise from
11 losing the proper ground clearance, and that GO-95
12 is the order that dictates how transmission lines
13 are constructed in California, and they maintain a
14 minimum 30-foot conductor to ground spacing,
15 unless you're over railroad tracks or other
16 similar devices where they want 34, 35 feet.

17 When PG&E does a re-rate study, the
18 first thing they do is they look at the increased
19 load put on that line. And then they change the
20 ambient weather conditions, and what they do is
21 normally lines are rated for summer conditions
22 with a two-foot-per-second wind speed. When you
23 re-rate a line, they change that to four-feet-per-
24 second, so it basically cools the conductor more
25 and allows it to carry more current.

1 The first thing they do is they evaluate
2 the area that the line is in to see does it
3 support the faster wind speed. And if it doesn't
4 pass that yes/no parameter, then, you know, the
5 ball game is over on that. In this area, the
6 lines easily pass that criteria.

7 The next thing they do is they look for
8 a loss of the proper ground clearance, and if that
9 were to take place to make the re-rate continue,
10 they would make you come in and raise towers,
11 something along that line.

12 The last thing they do, if there are no
13 ground clearance issues -- You pass the weather
14 conditions, there are no ground clearance issues,
15 they actually fly a helicopter over the
16 transmission lines with a thermographic camera to
17 look for what are called hot spots. That would be
18 maybe where the wires are spliced and they're
19 loose, and they would make the applicant repair
20 any of those under standard PG&E maintenance
21 practices.

22 Q Were there any hot spots identified in
23 this --

24 A No, sir, not -- As of yet, there have
25 not been any identified.

1 Q And this transmission line would hook up
2 to, I believe, Western's transmission lines at the
3 Tesla substation; is that correct?

4 A The sections that GWF requested the line
5 re-rate on are both down by the Kasson substation,
6 away from Tesla. And in essence, Mr. Sarvey,
7 these were sections of lines that are tying into
8 other portions of these lines that have already
9 been re-rated. And, for some administrative
10 reason, these short segments were not picked up.
11 And so we are -- the re-rate study we are doing is
12 picking up the remainder of those sections.

13 Q So essentially, the re-rate is just an
14 examination of the lines, and actually, unless
15 they find a hot spot, there is nothing replaced or
16 any new towers installed unless there is a problem
17 that they anticipate with the wind; is that
18 correct?

19 A Well, the wind criteria has to be
20 supported for them to even look at the rest of the
21 line, which it is supported for this area. Then
22 they look at the lines for ground clearance. Now,
23 they could come back to the applicant and say
24 we'll re-rate the line, but you've lost ground
25 clearance maybe in this one section, you need to

1 raise the towers. And at that point the applicant
2 would evaluate is it less impact to go out and
3 raise towers or to put on a new conductor.

4 But in our studies, there have been no
5 ground clearance issues raised, which makes it
6 pretty much an administrative process.

7 Q So it's just a basic examination of the
8 lines, then.

9 A Yes, that's correct.

10 Q All right. Are you aware or do you
11 know, does Western allowing re-rating the lines in
12 their system?

13 A I'm not sure what you're referring to as
14 Western.

15 Q Western, you have to hook up to Western.
16 PG&E hooks up to Western at some portion in the
17 grid, and do you know whether Western allows re-
18 ration of lines?

19 A No, I do not.

20 Q Okay, thank you.

21 HEARING OFFICER TOMPKIN: Any other
22 questions for this witness?

23 Thank you, Mr. Moore.

24 (Thereupon, the witness was
25 excused from the stand.)

1 HEARING OFFICER TOMPKIN: Staff?

2 MS. WILLIS: At this time staff would
3 like to move the testimony in the staff assessment
4 from Richard Minetto and Ajoy Guha on Transmission
5 System Engineering into the record.

6 HEARING OFFICER TOMPKIN: Any objection?

7 INTERVENOR SARVEY: I'd like to ask a
8 couple of questions, if I could.

9 HEARING OFFICER TOMPKIN: All right.
10 Ms. Davis is the person available for questions.

11 INTERVENOR SARVEY: Okay.

12 Whereupon,

13 CHERI DAVIS

14 Was called as a previously duly sworn witness
15 herein and was examined and testified as follows:

16 CROSS EXAMINATION

17 BY INTERVENOR SARVEY:

18 Q Ms. Davis, did the CEC staff review the
19 PG&E re-rate?

20 A I would refer, Mr. Sarvey, to our
21 conclusions and recommendations in the
22 Transmission System Engineering section.

23 Q And in your knowledge, Ms. Davis, does
24 Western allow re-ration of lines?

25 A That's outside the scope of my

1 knowledge.

2 INTERVENOR SARVEY: Thank you,
3 Ms. Davis.

4 HEARING OFFICER TOMPKIN: Thank you.

5 (Thereupon, the witness was
6 excused from the stand.)

7 HEARING OFFICER TOMPKIN: Is there any
8 objection to admission of the testimony in the
9 staff assessment? Hearing no objection, that
10 testimony will be admitted.

11 (Thereupon, the above-referenced document
12 section marked as Staff's Exhibit 4 for
13 identification was received into evidence.)

14 HEARING OFFICER TOMPKIN: Then we'll
15 move on to the next section, Transmission Line
16 Safety and Nuisance.

17 PRESIDING COMMISSIONER PERNELL: After
18 this section, we will break for lunch.

19 MR. GRATTAN: And before we go into the
20 next section, Madam Hearing Officer, I have a
21 request to make. I don't believe that we closed
22 the record with respect to Traffic and
23 Transportation. If we haven't done that, can I so
24 move right now?

25 HEARING OFFICER TOMPKIN: I neglected to

1 do that, and we will close the record in the area
2 of Traffic and Transportation.

3 MR. GRATTAN: Thank you.

4 HEARING OFFICER TOMPKIN: And we will
5 also close the record in the area of Transmission
6 System Engineering.

7 We're now moving to the topic area of
8 Transmission Line Safety and Nuisance.

9 Mr. Grattan?

10 MR. GRATTAN: Yes. I'll call Mr. Moore
11 up to the stand again.

12 Whereupon,

13 HAL MOORE

14 Was called as a previously duly sworn witness
15 herein and was examined and testified as follows:

16 MR. GRATTAN: He's already been sworn,
17 he's given his qualifications, and once again,
18 this issue was addressed in Mr. Moore's testimony
19 in Facility Design. The record on that has been
20 closed, but we will present him here for cross
21 examination on this subject.

22 HEARING OFFICER TOMPKIN: Staff, do you
23 wish to question this witness?

24 MS. WILLIS: No, we don't.

25 HEARING OFFICER TOMPKIN: Do any of the

1 intervenors wish to question this witness?

2 INTERVENOR SARVEY: I'd like to ask one
3 question, please.

4 HEARING OFFICER TOMPKIN: Mr. Sarvey?

5 CROSS EXAMINATION

6 BY INTERVENOR SARVEY:

7 Q In your analysis of electric
8 transmission line safety, do you include the EMF
9 consequences from transmission lines and increased
10 voltages and averages being transmitted across
11 those?

12 A First, as a -- Yes, EMF was looked at as
13 a point of record. There is no voltage increase .
14 The line today is 115,000 volts and that's what it
15 will be in the future.

16 Q So will the amperage increase then?

17 A What's the question?

18 Q Will the amount of amperage increase
19 across the existing lines, then?

20 A Amperage increase? I guess the best way
21 to describe that, Mr. Sarvey, is there are load
22 locations that are looked at spring, summer, and
23 peak and off-peak. And the load flows are -- the
24 load flows change for all cases, the amperage
25 changes for all cases.

1 We have evaluated PG&E and our
2 consultants have evaluated the line for the
3 megawatts that we are putting on the system, and
4 there are no overloads on those lines. We have
5 not gone back and looked at how PG&E's lines are
6 operated today. That's something that they do
7 when they do the study. We can't say, like I say,
8 that the conductors that are out there are not
9 overloaded due to this project.

10 Q We re-rated the lines due to, or PG&E
11 re-rated the lines due to the increased amount of
12 electricity that would be crossing them, and will
13 that increase the electromagnetic field that is
14 being emitted from these lines?

15 A Yes. The EMF is a function of the
16 amount of current that is carried through the
17 line.

18 Q And in your analysis, did you identify
19 any homes or schools or any facilities such of
20 that nature that are within, say, 500 feet of
21 those lines?

22 A I believe the testimony indicates there
23 is nothing within 350 feet of the line.

24 Q In your impact analysis of this
25 increased electrical transmission on these lines,

1 did you take into account the Plan C developments,
2 South Schulte and Tracy Hills, the locations of
3 their homes in relation to these lines?

4 A No, we did not.

5 INTERVENOR SARVEY: Thank you,
6 Mr. Moore.

7 HEARING OFFICER TOMPKIN: Anything
8 further for this witness?

9 All right.

10 (Thereupon, the witness was
11 excused from the stand.)

12 HEARING OFFICER TOMPKIN: Then staff?

13 MS. WILLIS: Okay. At this time staff
14 would like to move the testimony of Obed Odoenelam
15 in Transmission Line Safety and Nuisance from the
16 staff assessment into the record.

17 HEARING OFFICER TOMPKIN: Is there any
18 objection?

19 INTERVENOR SARVEY: I'd like to ask a
20 couple of questions, please.

21 HEARING OFFICER TOMPKIN: Mr. Sarvey.
22 Whereupon,

23 CHERI DAVIS

24 Was called as a previously duly sworn witness
25 herein and was examined and testified as follows:

1 CROSS EXAMINATION

2 BY INTERVENOR SARVEY:

3 Q Ms. Davis, do you understand the effects
4 of electromagnetic fields and their proximity to
5 residences?

6 A No, I don't.

7 Q Did the staff analyze any of those
8 impacts in their analysis?

9 A Yes, we did.

10 Q Did the staff include the future
11 developments which I previously mentioned -- Plan
12 C, South Schulte and Tracy Hills, and their
13 location to their homes in relation to these
14 transmission lines?

15 A I can't answer that and I guess I would
16 direct Mr. Sarvey to our testimony.

17 INTERVENOR SARVEY: Thank you,
18 Ms. Davis.

19 HEARING OFFICER TOMPKIN: Thank you. Is
20 there any objection to admission of the testimony
21 from the staff assessment? Hearing no objection,
22 that testimony will be admitted in evidence.

23 (Thereupon, the above-referenced document
24 section marked as Staff's Exhibit 4 for
25 identification was received into evidence.)

1 HEARING OFFICER TOMPKIN: At this time,
2 then, we will close the --

3 MR. GRATTAN: Madam Hearing Officer,
4 before we close the record, I just want to make
5 one comment for the record, note that the issue of
6 Transmission Line Safety and Nuisance, the issue
7 of -- within that, the issue of electromagnetic
8 effects that we covered that last night under
9 public health. It was part of our public health
10 testimony, so it was covered basically in three
11 areas.

12 HEARING OFFICER TOMPKIN: Thank you,
13 Mr. Grattan.

14 At this time we'll close the record on
15 evidence for Transmission Line Safety and
16 Nuisance.

17 PRESIDING COMMISSIONER PERNELL: Okay.
18 We'd like to break for lunch and be back at 12:35
19 to resume.

20 Thank you.

21 (Thereupon, the luncheon recess was held
22 off the record.)

23 --oOo--

24

25

1 A F T E R N O O N S E S S I O N

2 PRESIDING COMMISSIONER PERNELL: Okay.

3 We are back on the record. The committee, we are
4 reconvened. Ms. Tompkin.

5 HEARING OFFICER TOMPKIN: Thank you,
6 Commissioner Pernell.

7 Mr. Grattan?

8 MR. GRATTAN: Yes. Thank you, Hearing
9 Officer. I have a couple of housekeeping items.
10 One is the testimony, the prefiled testimony of
11 Mr. Hulse, who is the county planning director,
12 and who is being sponsored by Mr. Tusso for the
13 13th. We had requested that we see prefiled
14 testimony.

15 And my understanding -- I talked to the
16 Public Adviser, and she has talked to
17 Mr. Seligman, and my understanding is that that
18 prefiled testimony is on its way to the hearing
19 room.

20 Mr. Tusso, are you involved in the
21 logistics of this at all? You can finish your
22 lunch.

23 (Laughter.)

24 INTERVENOR TUSO: Yeah, that's my
25 understanding. I don't know the exact details at

1 this time.

2 MR. GRATTAN: Okay. It would be -- If I
3 can ask your indulgence maybe to talk to
4 Mr. Seligman and to make sure if it's delivered
5 here, then we'll all have it and we can
6 wonderfully review it over the weekend.

7 HEARING OFFICER TOMPKIN: Well,
8 Mr. Grattan, I received a note from the Public
9 Adviser just on our break, and it says that she's
10 requested that a copy of that testimony, which is
11 approximately 15 pages, be faxed here to the
12 Holiday Inn, and --

13 MR. GRATTAN: Be faxed to the Inn?

14 HEARING OFFICER TOMPKIN: Right, and so
15 anytime now hopefully we'll receive it, and that
16 will be made available to the parties.

17 MR. GRATTAN: Very good. Thanks. We
18 appreciate the cooperation that's been
19 demonstrated here.

20 The next --

21 PRESIDING COMMISSIONER PERNELL:
22 Mr. Grattan, before you go forward, also in the
23 area of housekeeping, just to let some of the
24 parties know how we're going to end this
25 evidentiary hearing, the committee will allow

1 approximately 15 minutes for comments from the
2 parties and the intervenors, and this can be in
3 the form of a statement, a final statement on --
4 Normally it's issues that you're most concerned
5 about, but you can have a final statement, and I'm
6 saying this now to give you time to prepare that
7 statement.

8 But we would entertain a final statement
9 from the parties not to exceed 20 minutes. So, as
10 a matter of housekeeping, so that you could be
11 prepared for that. Thank you.

12 Mr. Grattan.

13 MR. GRATTAN: I wanted to set out in the
14 record that yesterday when we were or maybe it was
15 today, last night when we were going through air
16 quality, the issue was raised about what does the
17 applicant plan to do about securing local emission
18 reduction credits for local emission reductions.
19 We intend to submit a plan -- Well, excuse me. We
20 intend to submit some conditions which we agree to
21 be bound by which would have -- the concept is for
22 us to come up with a plan and to have that plan
23 reviewed by city, county and the San Joaquin
24 Valley Air Pollution Control District, and then to
25 the CPM.

1 We don't have all the details of how
2 we're going to draft this condition. We would be
3 requesting on the 13th that we reopen the record
4 for the submission of these proposed conditions,
5 and what we would propose to do is give all the
6 parties, including staff, a chance to look at what
7 we're proposing. And again, this is a voluntary
8 proposal, what we're proposing, and we'll get that
9 out to the parties on Monday, so everyone will
10 have a couple of days to look at it.

11 INTERVENOR SUNDBERG: If that's coming
12 out on Monday, will that be through the mail or
13 how will that be served to us?

14 MR. GRATTAN: I'll make sure you get it.
15 I will make sure and GWF will make sure that you
16 get it.

17 INTERVENOR SUNDBERG: May I suggest you
18 overnight that, because we don't seem to be able
19 to get our mail service delivered.

20 MR. GRATTAN: Yeah. We're six blocks
21 from the Energy Commission and we have a similar
22 problem. What we'll do is we'll either get it
23 there by courier, we can e-mail it, we can fax it.
24 We'll make sure that you have it on Monday, not
25 that it goes out on Monday and you get it on

1 Thursday.

2 INTERVENOR SARVEY: I want you to hand-
3 deliver my copy, John.

4 (Laughter.)

5 MR. GRATTAN: I will do that. We'll do
6 it at the end of the day, maybe.

7 HEARING OFFICER TOMPKIN: All right.

8 PRESIDING COMMISSIONER PERNELL: Okay.
9 Are there any more housekeeping items we want
10 to --

11 INTERVENOR SARVEY: Well, I just had a
12 question concerning the reopening of the record
13 there on the air quality. Will we just be
14 discussing that mitigation or the, excuse me, the
15 voluntary conditions? Is that what we'll be
16 discussing?

17 HEARING OFFICER TOMPKIN: It will be
18 limited to that.

19 INTERVENOR SARVEY: Just that, okay.

20 HEARING OFFICER TOMPKIN: Just that.

21 INTERVENOR SARVEY: Okay. I did have
22 some housekeeping items too, Mr. Pernell, when
23 you're done.

24 PRESIDING COMMISSIONER PERNELL: Go
25 ahead.

1 INTERVENOR SARVEY: I alluded to the
2 fact that I had submitted a demand to correct or
3 cure violations of the Bagley-Keene Open Meeting
4 Act, and I said that I would provide it and to
5 this date I haven't, and I'm still awaiting an
6 answer on this issue.

7 So I would like to submit this and I
8 also have a couple of comments about public
9 participation.

10 HEARING OFFICER TOMPKIN: Okay. Well,
11 we'll docket this and take a look at it later.

12 INTERVENOR SARVEY: It's a little late
13 in the game to be bringing this up and I wish I'd
14 had an opportunity or the foresight to bring it up
15 earlier, but the public participation is being
16 limited because of the late end times of this
17 meeting. We've been covering a lot of issues, and
18 I would like to request a couple of things.

19 One, that the public be allowed to
20 comment after each item, and I know that's very
21 burdensome and it's late in this game, but the
22 public does deserve a right, and to ask them to
23 wait to 11:00 or 12:00 seems unreasonable, and
24 even 1:00 o'clock or 12:30 in some instances. And
25 I would like to make, I guess it would be in the

1 form of a motion or whatever, that we allow the
2 public to speak -- a limited time, of course, at
3 your discretion -- just for a few minutes between
4 each issue.

5 Because these people, some of them are
6 sacrificing a lot to be here. They're away from
7 their families, you know, and some of us have left
8 our jobs to be here, and I think it's important
9 that the public be heard. And we have granted
10 public participation but it has occurred at hours
11 that are not really meaningful in terms of number
12 of public that can really attend and even be awake
13 to say anything reasonable and positive.

14 And I'd also like to, and this is
15 another probably unreasonable request, but the
16 fact that we have a hearing at 10:00 o'clock, you
17 know, I myself, I work from 10:00 to 6:00, and
18 most of the public does, and I know that there's a
19 real problem getting this done and staff time is
20 limited and applicant has to hire his attorneys
21 and such, but I would really like to see these
22 things starting at 5:00 o'clock like the other two
23 meetings did. It wasn't the ideal time, but it
24 was much preferable to 10:00 o'clock.

25 And, you know, I appreciate the

1 opportunity to comment on the public participation
2 and thank you, Mr. Pernell.

3 PRESIDING COMMISSIONER PERNELL: I'll
4 respond to that. You know, I think this committee
5 has given a lot of latitude to the community and
6 to everyone involved, in terms of participation.
7 As I stated before, we don't have to have
8 meetings -- there's nothing that's obligating us
9 to even have meetings in Tracy.

10 INTERVENOR SARVEY: I appreciate that.

11 PRESIDING COMMISSIONER PERNELL: And
12 we're doing that. Also, the procedure in which,
13 when I'm the presiding member, I want to hear all
14 of the evidence and the public testimony at the
15 end. And I don't intend to change that, so that
16 request is not going to be accepted.

17 But I think this Commission, and I know
18 that you're inconvenienced and everybody is
19 working, but, I mean, the people that I have up
20 here that come from Sacramento that stay and some
21 drive back are also inconvenienced. But we're
22 doing it because the community has an interest in
23 this project.

24 So I think we have done a lot to
25 accommodate the community by having these meetings

1 here, and quite frankly, I don't intend to change
2 any way we are conducting this business, not at
3 this time. And that is something that -- and
4 maybe I shouldn't say that because I want to
5 consult with my colleague on this, but as the
6 presiding member, I think that we have gone a long
7 way in accommodating the community by bringing
8 these meetings to the community.

9 And let me just state again, we don't
10 have to do that. We can put you on a conference
11 call and we can sit in Sacramento. The applicant
12 would probably prefer that, but I think that we
13 need to be here and we are here. But to request
14 that we be here at a certain time when everybody
15 gets off and has dinner, I think that's a little
16 much to ask from the Commission.

17 INTERVENOR SARVEY: I want to thank you
18 for bringing these proceedings to Tracy. I think
19 you've done a very good job. Thank you.

20 PRESIDING COMMISSIONER PERNELL: Thank
21 you.

22 All right. At this time we want to
23 continue. We are now on Compliance Monitoring and
24 Closure.

25 HEARING OFFICER TOMPKIN: Mr. Grattan?

1 MR. GRATTAN: Yes. Mr. Moore previously
2 testified and sponsored exhibits in this area, it
3 was part of Facility Design. We view this as
4 largely an issue where the Energy Commission staff
5 has requirements and we've complied with them,
6 they have a process and we comply with it.

7 We don't have too much, other than what
8 we've already sworn to, to say in this matter.

9 HEARING OFFICER TOMPKIN: I'm sorry,
10 what was your final statement?

11 MR. GRATTAN: My final statement is
12 we've got our testimony in the record and we pass.

13 HEARING OFFICER TOMPKIN: All right.
14 Mr. Sarvey?

15 INTERVENOR SARVEY: I just wanted to ask
16 a couple of questions, but go ahead and proceed
17 with whatever form --

18 HEARING OFFICER TOMPKIN: Well, this
19 would be the appropriate time for the witness, if
20 applicant wishes --

21 MR. GRATTAN: If we can answer them, we
22 certainly will.

23 INTERVENOR SARVEY: Okay.

24 MR. GRATTAN: Mr. Moore. And I know,
25 for the record, Mr. Moore has been previously

1 sworn.

2 Whereupon,

3 HAL MOORE

4 Was called as a previously duly sworn witness
5 herein and was examined and testified as follows:

6 CROSS EXAMINATION

7 BY INTERVENOR SARVEY:

8 Q I'm concerned in the area of the
9 compliance monitoring of emissions, and I would
10 like to know what types of equipment and what
11 emissions you'll be monitoring continually from
12 your plant.

13 MR. GRATTAN: That's an air quality
14 question which I believe that we went through last
15 night or was appropriate to go through last night.
16 I don't believe Mr. Moore can really answer those
17 questions. And I'm not objecting here, I'm sort
18 of explaining that I believe that this area we're
19 going into is the system for compliance
20 monitoring, rather than specific pieces of
21 monitoring equipment.

22 INTERVENOR SARVEY: You're absolutely
23 right, Mr. Grattan. Thank you.

24 HEARING OFFICER TOMPKIN: All right. If
25 there's nothing further, we'll pass to staff.

1 (Thereupon, the witness was
2 excused from the stand.)

3 MS. WILLIS: Thank you. Before we offer
4 our written testimony into the record, I just
5 wanted to answer a question that was posed to me
6 during the break by Mr. Sarvey. Just because we
7 have not had a lot of workshops, I think there is
8 some confusion about where compliance monitoring
9 is in our staff assessment, and just to explain to
10 others that in each section, in each technical
11 section, following the section there are
12 conditions of certification that also have
13 protocols and verifications.

14 That's where you'll find the majority
15 of -- That will be going to a compliance project
16 manager, who will then oversee the project if it
17 is, in fact, certified by the Commission. So the
18 project manager that is next to me today handles
19 the project through the siting process. The
20 compliance project manager handles the project
21 after that, then would consult with technical
22 staff on various issues as they arise.

23 There is also a section entitled
24 Compliance Monitoring and Facility Closure, and
25 that's the section that has general conditions and

1 also conditions in the event of closure of the
2 facility. That's the section that we would be
3 sponsoring by Christian Huntley today, and we'd
4 like to move that into the record.

5 HEARING OFFICER TOMPKIN: Is there any
6 objection? Mr. Sarvey?

7 INTERVENOR SARVEY: I'd like to ask a
8 couple of questions, please.

9 HEARING OFFICER TOMPKIN: You may
10 proceed.

11 INTERVENOR SARVEY: If I have a
12 complaint about the facility, then I address that
13 to Ms. Davis, even after these proceedings?

14 MS. WILLIS: I can clarify that.

15 INTERVENOR SARVEY: If I have a
16 compliance problem, then Ms. Davis is the one that
17 I address for CEC response?

18 MS. WILLIS: No, that would go to the
19 compliance project manager, who is Christian
20 Huntley.

21 INTERVENOR SARVEY: Christian Huntley.
22 Whereupon,

23 CHERI DAVIS
24 Was called as a previously duly sworn witness
25 herein and was examined and testified as follows:

1 CROSS EXAMINATION

2 BY INTERVENOR SARVEY:

3 Q Were there any unusual general
4 conditions of certification in this area,
5 Ms. Davis?

6 A No.

7 Q Okay.

8 A They're all standard.

9 Q They're all standard.

10 PRESIDING COMMISSIONER PERNELL: Also,
11 Mr. Sarvey, I would add that if for some reason
12 you lose that name, the Public Adviser, if you
13 have the name of the case and the number, can lead
14 you to the compliance manager.

15 INTERVENOR SARVEY: Would these
16 compliance complaints or whatever to the CEC be
17 addressed to this person only for this project, or
18 for other projects that the applicant owns and
19 operates? Is there a different compliance manager
20 for each project?

21 PRESIDING COMMISSIONER PERNELL: I can't
22 answer that.

23 MS. WILLIS: I can answer that. Are you
24 talking about other projects that are approved
25 through the Energy Commission?

1 INTERVENOR SARVEY: Yeah.

2 MS. WILLIS: Each project has its own
3 compliance project manager. There's a compliance
4 staff that's headed by Chuck Najarian, and I
5 believe there's -- We're just looking to make
6 sure, but I believe there's either a 1-800 phone
7 number --

8 THE WITNESS: There's a complaint and
9 resolution, complaint report and resolution form
10 on page 8-10 of the General Commission section.

11 MS. WILLIS: And also, if I may add, our
12 compliance managers respond as soon as possible,
13 if not immediately, to any complaints.

14 INTERVENOR SARVEY: Thank you very much.

15 (Thereupon, the witness was
16 excused from the stand.)

17 HEARING OFFICER TOMPKIN: Anything
18 further?

19 MS. WILLIS: No.

20 HEARING OFFICER TOMPKIN: Is there any
21 objection to the declaration of Christian Huntley?
22 Hearing no objection, it will be admitted in
23 evidence.

24 At this time, then, we will move on to
25 Paleontology. Mr. Grattan?

1 Oh, well, first of all, let me close the
2 record on Compliance Monitoring and Closure. The
3 record is closed at this time.

4 Mr. Grattan, Paleontology?

5 MR. GRATTAN: Yes, one second.

6 We're prepared to enter the prefiled and
7 sworn declaration of Mr. David Lawler, for
8 Paleontological -- Dr. David Lawler, for
9 Paleontological Resources.

10 HEARING OFFICER TOMPKIN: Is there any
11 objection to that testimony? Mr. Sarvey?

12 INTERVENOR SARVEY: Yeah, I'd like to
13 hear Mr. Grattan say Paleontological again.

14 (Laughter.)

15 MR. GRATTAN: You caught that, huh?
16 Paleontological Resources.

17 INTERVENOR SARVEY: I can't say it
18 either.

19 HEARING OFFICER TOMPKIN: Hearing no
20 objection, the declaration and testimony of
21 Mr. David Lawler will be admitted in evidence.

22 MR. GRATTAN: Oh, and I'm sorry, we also
23 want to sponsor the exhibits.

24 APPLICANT COUNSEL KARP: Okay. I'll
25 take a try. We're also -- The applicant's

1 Paleontological Resources exhibits -- It is a
2 tough one -- Section 8.16 of the application and
3 Appendix H of the application. That has already
4 been admitted into evidence as Exhibit One.
5 Section 2.1 and Appendix D of the Wet Weather
6 Construction Contingency Plan. That is
7 Exhibit 12. And Section 3.14 of the supplement to
8 the application, October 2001. That is
9 Exhibit Two.

10 So it's those portions of the previously
11 admitted exhibits.

12 HEARING OFFICER TOMPKIN: Is there any
13 objection to the admission of those sections?
14 Hearing no objection, those sections will be
15 admitted in evidence.

16 (Thereupon, the above-referenced sections of
17 documents marked as Staff's Exhibits 1, 2 & 4 for
18 identification were received into evidence.)

19 HEARING OFFICER TOMPKIN: All right.
20 Staff?

21 MS. WILLIS: Thank you. Staff's
22 testimony was combined, Geology and Paleontology
23 are in one section. So at this time we would want
24 to move both of them into evidence, both topics,
25 which actually are covered under one section,

1 written by Neal Mace, his declaration and resume
2 was attached to the written testimony.

3 HEARING OFFICER TOMPKIN: Is there any
4 objection? Hearing no objection, the declaration
5 of Neal Mace covering both Paleontology and
6 Geology will be admitted in evidence.

7 With that, we'll move back to applicant
8 for Paleontology -- I mean, excuse me, Geology.

9 MR. GRATTAN: Yes. The applicant is
10 prepared to enter the declaration and exhibits
11 sponsored by Laura Perez. This is a prefiled and
12 sworn declaration, and the subject is Geological
13 Resources and Hazards.

14 HEARING OFFICER TOMPKIN: Is there any
15 objection? The declaration of Ms. Perez will be
16 admitted in evidence.

17 MR. GRATTAN: And, if you will allow us
18 to recite the documents she's sponsoring.

19 APPLICANT COUNSEL KARP: On the
20 Geological Resources, the exhibits are Section
21 8.15 of the original application that, again, is
22 Exhibit One. Section 3.14 of the supplement to
23 the application, that is Exhibit Two. We do have
24 a new exhibit which I believe is 46.

25 HEARING OFFICER TOMPKIN: Yes.

1 APPLICANT COUNSEL KARP: Okay. And to
2 be marked as Exhibit 46 would be Data Response 25,
3 November 9th, 2001.

4 HEARING OFFICER TOMPKIN: The data
5 response will be marked as Exhibit 46 for
6 identification.

7 (Thereupon, the above-referenced
8 document was marked as Staff's
9 Exhibit 46 for identification.)

10 HEARING OFFICER TOMPKIN: Is there any
11 objection to admission of the sections or Data
12 Response, Exhibit 46, identified by applicant?
13 Hearing no objection, those items will be admitted
14 in evidence.

15 (Thereupon, the above-referenced sections and
16 documents marked as Staff's Exhibit 46 for
17 identification were received into evidence.)

18 HEARING OFFICER TOMPKIN: At this time
19 we'll close the record on Paleontology and
20 Geology, and we'll move on to the next topic area,
21 which is Cultural Resources.

22 Mr. Grattan?

23 MR. GRATTAN: Things are moving so fast,
24 I just wanted to make -- I didn't hear whether
25 staff's testimony and exhibit were admitted.

1 HEARING OFFICER TOMPKIN: They were.

2 MR. GRATTAN: Okay. Next is Cultural,
3 and we'd like to admit the sworn declaration, if
4 that's not redundant, of Brian Hatoff and the
5 attendant exhibits, and the subject, again, is
6 Cultural Resources. No objection, and we'll read
7 the exhibits.

8 APPLICANT COUNSEL KARP: Thank you. On
9 Cultural Resource exhibits, Section 8.13 and
10 Appendix C of the original application on August
11 2001. Again, that application is already admitted
12 as Exhibit One. Section 3.3 of the supplement to
13 the application of October 2001. That application
14 supplement is already Exhibit Two.

15 We have another new exhibit, and we are
16 moving fast, so I also have -- Okay, we're up to
17 47, then. And for identification purposes, new
18 Exhibit 47 would be Data Responses 17 through 24
19 and the attachment to those responses dated
20 November 9th, 2001.

21 HEARING OFFICER TOMPKIN: All right.

22 (Thereupon, the above-referenced
23 document was marked as Staff's
24 Exhibit 47 for identification.)

25 APPLICANT COUNSEL KARP: And lastly, the

1 Cultural Resources portion of the Wet Weather
2 Contingency Plan, and give me a second to find
3 that, and that is already Exhibit 12. Those are
4 the Cultural Resource exhibits.

5 HEARING OFFICER TOMPKIN: Thank you. Is
6 there any objection to admission of Exhibit 47,
7 which is the Data Responses 17 through 24 and
8 attachments or the other sections identified by
9 the applicant? Hearing no objection, those items
10 will be admitted in evidence.

11 (Thereupon, the above-referenced sections and
12 documents marked as Staff's Exhibit 47 for
13 identification were received into evidence.)

14 HEARING OFFICER TOMPKIN: Staff?

15 MS. WILLIS: Thank you. At this time
16 staff would like to move the section of the staff
17 assessment entitled Cultural Resources by Caprice
18 Harper and Gary Reinell, along with their
19 declarations and resumes.

20 HEARING OFFICER TOMPKIN: Is there any
21 objection? Hearing no objection, those items will
22 be admitted in evidence.

23 (Thereupon, the above-referenced section
24 marked as Staff's Exhibit 4 for
25 identification was received into evidence.)

1 HEARING OFFICER TOMPKIN: At this time
2 we'll close the record on Cultural Resources, and
3 we'll move to our next topic area which is Worker
4 Safety and Fire Protection.

5 Mr. Grattan?

6 MR. GRATTAN: Yes, and the applicant
7 would like to enter the sworn declaration and
8 prefiled testimony of Angela Liang, and the actual
9 title of that declaration is Worker Health and
10 Safety. That does include Fire Protection. And
11 we would also like to bring her exhibits into
12 evidence as well.

13 APPLICANT COUNSEL KARP: Thank you. The
14 Worker Health and Safety exhibits for applicant
15 are Section 8.6 of the original application in
16 August 2001, which already has been introduced
17 into evidence as Exhibit One, and Section 3.6 of
18 the supplement to the application, October 2001,
19 which has already been accepted as Exhibit Two.
20 So we're sponsoring those portions of those two
21 previously admitted exhibits.

22 HEARING OFFICER TOMPKIN: Any objection?

23 INTERVENOR SARVEY: Yeah, I'd like to
24 ask some questions, please.

25 HEARING OFFICER TOMPKIN: Mr. Sarvey.

1 Whereupon,

2 DAVID STEIN

3 Was called as a previously duly sworn witness
4 herein and was examined and testified as follows:

5 CROSS EXAMINATION

6 BY INTERVENOR SARVEY:

7 Q Under your construction monitoring
8 program, you indicated that you would have some
9 air monitoring. What air monitoring will be done
10 for construction PM10 and PM2.5 emissions?

11 A I'm not aware, Mr. Sarvey, that any PM10
12 monitoring has been proposed for the construction
13 phase of the project.

14 Q Considering the high levels of PM10 that
15 have been indicated in the AFC, would you feel
16 that's appropriate to have that monitoring
17 available, to protect your workers and people
18 possibly living -- and migrant workers, or not
19 migrant workers but farm workers working near the
20 fence line?

21 A No.

22 Q In the supplement, I recall a
23 conversation between GWF and the Tracy Fire
24 Department about mitigation, I think the figure
25 was \$300,000, indicating the first conversation

1 with the Fire Department said they would need
2 approximately \$300,000 to mitigate the impacts of
3 TPP. Can you tell me briefly what things they
4 wanted to mitigate or why they felt they needed
5 \$300,000 in your discussions with them?

6 A I can't respond to your question,
7 Mr. Sarvey. I'm not aware of those conversations
8 and any motivations of the Fire Department.

9 Q Well, in the -- It's in the, I believe
10 the staff assessment, and I'm concerned about the
11 fact that \$300,000 was offered to the Tracy Fire
12 Department, or was that -- I'd like to have an
13 answer to that question at this time. Was that
14 offered or was that suggested by the Tracy Fire
15 Department that that's what they needed?

16 A I don't have an answer for you,
17 Mr. Sarvey. I'm not aware of any offer that was
18 made to the Tracy Fire Department.

19 INTERVENOR SARVEY: Does the applicant
20 have anyone in the room that can respond to that
21 question?

22 Whereupon,

23 DOUGLAS WHEELER
24 Was called as a previously duly sworn witness
25 herein and was examined and testified as follows:

1 DIRECT TESTIMONY

2 THE WITNESS: Doug Wheeler, GWF. In our
3 followup conversations with the Fire Department,
4 the \$300,000 that was identified were associated
5 with the annual costs associated with additional
6 staffing, and it was to address what they thought
7 would be their incremental needs associated with
8 all three projects that are being licensed in this
9 area; namely, East Altamont, Tesla and the peaker
10 project.

11 In those discussions, where we left it
12 with the City Fire Department, is, as it relates
13 to the proposed project, they didn't feel that any
14 additional resources would be required.

15 CROSS EXAMINATION

16 BY INTERVENOR SARVEY:

17 Q In my conversation with Larry Fergoso,
18 he indicated that what he had said was that he
19 expected the three facilities to split in the cost
20 of this mitigation, and the supplement indicated
21 that the applicant felt that the Fire Department
22 asked for no mitigation, and I would like to have
23 a little clarification on that, please.

24 A I think that the only other issue that
25 GWF discussed with the Fire Department was the

1 possible additional training of their existing
2 employees to deal with issues that they feel may
3 be appropriate, associated with the proposed
4 project. That was the only other mitigation that
5 was discussed.

6 Q Has that mitigation been provided?

7 A No. As of this date we have not
8 provided -- we haven't received any request from
9 the Tracy Fire Department to provide the training.
10 The way we left it, we would respond to their
11 request if they felt additional training of their
12 personnel was required.

13 Q So the applicant will voluntarily
14 provide that as a condition, or --

15 A That's the understanding that we have
16 from the Fire Department. I think probably the
17 best way, is we, as I stated, we're willing to
18 provide that additional training. If the
19 Commission feels that it needs to be included as a
20 condition, we don't oppose the condition. I think
21 that it would be appropriate to get better
22 clarification from the Tracy City Fire Department,
23 though.

24 MR. GRATTAN: At this point if I can
25 interject that it is our position that neither the

1 staff report nor the applicant's testimony
2 indicate that this is mandated by any health or
3 safety factor, or any factor under the California
4 Environmental Quality Act, the fact that we're
5 willing to discuss this and willing to do and
6 willing to accommodate the local fire department,
7 we're doing this because we want to be good
8 neighbors here. We're not deferring mitigation in
9 any way.

10 INTERVENOR SARVEY: Yes, I believe
11 you're corporately responsible and you will
12 provide that, so I'll tail that part of the
13 discussion off.

14 BY INTERVENOR SARVEY:

15 Q But I wanted to speak to the staffing
16 requirements of the station that will be
17 responding to this fire, and from my understanding
18 from conversations with Larry Fergosa, that at
19 most times, or not most times but 50 percent of
20 the time they only have two people on staff, and I
21 believe that you would need three people under
22 normal circumstances to respond to any fire, much
23 less a fire that would occur at this type of
24 facility.

25 Would you agree with that or disagree

1 with that?

2 A Mr. Sarvey, I don't have an opinion to
3 offer on that topic.

4 Q If Mr. Partridge's observation on his
5 site visit to Hanford is correct, is there any
6 safety or worker safety or public safety issues we
7 should be concerned about, related to a natural
8 gas leak at the facility?

9 A I'm sorry, could you repeat the
10 question, please.

11 Q If Mr. Partridge's assertion that I made
12 earlier and several of the people who visited the
13 plant in Hanford immediately smelled gas upon
14 their arrival, would that pose any type of fire
15 safety or public hazard that we should be
16 concerned about?

17 MR. GRATTAN: I'm going to object
18 reluctantly and gently to the question. This is a
19 question based on hearsay, based on facts which
20 aren't in the record. There were, by the way,
21 four people on that trip. I was -- Actually,
22 there were some more. The applicant had I guess
23 another four people. I was one of them. If you
24 want my sensory impression, I didn't smell any gas
25 going into that plant, but anyway, I'll object

1 that that question is based on hearsay.

2 INTERVENOR SUNDBERG: Can we have his
3 comment stricken from the record, please?

4 HEARING OFFICER TOMPKIN: No, I'll
5 overrule that objection, and I'll sustain the
6 objection of Mr. Grattan.

7 MR. GRATTAN: Thank you.

8 INTERVENOR SARVEY: Ms. Sundberg was on
9 that trip. Is she available to testify that she
10 also observed that smell?

11 HEARING OFFICER TOMPKIN: Well, no.
12 See, that's the issue. Sensory impressions of
13 various witnesses are really not relevant to this
14 project, and I'll sustain Mr. Grattan's objection.
15 So you may ask your next question.

16 INTERVENOR SARVEY: All right.

17 BY INTERVENOR SARVEY:

18 Q In your analysis of the fire dangers and
19 possible hazards of this facility, did you take
20 into account the 1996 fire at the Tracy Biomass
21 plant that involved 17 stations or 17 districts,
22 burned for three days, and cost approximately
23 \$250,000?

24 A No, the analysis did not take into
25 account that fire nor do I understand the

1 relevance of the question.

2 Q The relevance of the question is that
3 these facilities are located within proximity of
4 each other. And, as far as the relevancy, I'd
5 like to submit this incident report into the
6 record to show that we do have a very high
7 potential fire possibility at the Tracy Biomass
8 plant, and that there's possible conditions that
9 should be inserted into the record to address
10 this. And I have copies for everyone.

11 MR. GRATTAN: I'm going to have to
12 object to that. The subject before this
13 Commission is the Tracy peaker plant and not
14 relevant.

15 INTERVENOR SARVEY: I believe I've
16 already identified the Tracy peaker plant as being
17 located very close to the Biomass plant, and, as I
18 said before, this fire burned for three days and
19 required response by 17 districts to put it out.

20 HEARING OFFICER TOMPKIN: Well, I'm not
21 inclined to accept it as evidence, but you can
22 offer it to the committee. We'll docket it as
23 part of the public information and the public
24 record.

25 BY INTERVENOR SARVEY:

1 Q Did you identify any other threats to
2 worker safety besides the fire issues that I've
3 brought forward?

4 MR. GRATTAN: I'll let Mr. Stein try and
5 answer that. Again, we had agreed to testify by
6 declaration. Mr. Stein is here. If he has direct
7 knowledge of an issue or if it's within his
8 general professional knowledge, he'll do the best
9 he can.

10 THE WITNESS: I'm not aware of any,
11 Mr. Sarvey. I believe the facility to be designed
12 and proposed to operate in compliance with all
13 applicable laws, ordinances, regulations and
14 standards related to the protection of worker
15 health and safety.

16 And in that regard, there are no
17 significant threats to individuals that would be
18 located at the site.

19 BY INTERVENOR SARVEY:

20 Q Did you do any studies in relation to
21 repeated exposure to ammonia fumes for any of the
22 workers?

23 A I'm not aware of any studies of that
24 nature.

25 INTERVENOR SARVEY: Thank you.

1 HEARING OFFICER TOMPKIN: Is there
2 anything further for this witness?

3 MS. WILLIS: No.

4 HEARING OFFICER TOMPKIN: All right.
5 Mr. Grattan?

6 MR. GRATTAN: We would move the
7 testimony and exhibits of Angela Liang into
8 evidence, as well as the exhibits she's
9 sponsoring.

10 APPLICANT COUNSEL KARP: Did we do that?

11 MR. GRATTAN: Yeah, we did that already.

12 HEARING OFFICER TOMPKIN: Any objection?
13 All right. The applicant's evidence on Worker
14 Safety and Fire Protection will be admitted in
15 evidence.

16 (Thereupon, the above-referenced sections of
17 documents marked as Staff's Exhibits 1 & 2 for
18 identification were received into evidence.)

19 HEARING OFFICER TOMPKIN: Ms. Willis?

20 MS. WILLIS: Staff would like to move in
21 the written testimony and the staff assessment of
22 Dr. Alvin J. Greenberg on Worker Safety and Fire
23 Protection. We'd also like to move his
24 declaration and resume.

25 HEARING OFFICER TOMPKIN: Any objection?

1 Mr. Sarvey?

2 INTERVENOR SARVEY: Yeah. Has staff
3 recommended any air quality measurements occur
4 during the construction period in relation to PM10
5 and PM2.5?

6 MS. WILLIS: I would object that that
7 question should have been addressed to our air
8 quality staff. They were present here last night
9 for quite some time.

10 INTERVENOR SARVEY: Well, I think this
11 is on the issue of worker safety, isn't it?

12 MS. WILLIS: The worker safety
13 conditions are in the back of the testimony, if
14 you've reviewed them. They're pretty basic.
15 There's two conditions.

16 INTERVENOR SARVEY: So the answer is no,
17 then.

18 MS. WILLIS: Not under Worker Safety.

19 INTERVENOR SARVEY: Thank you.

20 HEARING OFFICER TOMPKIN: Anything
21 further? Is there any objection to the proposed
22 testimony and declaration of Mr. Greenberg that's
23 offered by staff? Hearing no objection, the
24 evidence offered by staff in the area of Worker
25 Safety and Fire Protection will be admitted in

1 evidence.

2 HEARING OFFICER TOMPKIN: And at this
3 time -- Ms. Sundberg, did you have anything?

4 INTERVENOR SUNDBERG: No, not at this
5 time.

6 HEARING OFFICER TOMPKIN: At this time,
7 then, we will close the topic area of Worker
8 Safety and Fire Protection, and I don't believe
9 that I've closed the topic area of Cultural
10 Resources, so we'll also close that topic area at
11 this time. And that concludes the topic areas
12 that we have scheduled for today.

13 We've also received copies of the
14 testimony of Mr. Hulse that Mr. Grattan referred
15 to earlier, and that will be made available to the
16 parties.

17 Mr. Sarvey?

18 INTERVENOR SARVEY: Mr. Hulse is going
19 to be allowed to testify; is that correct?

20 HEARING OFFICER TOMPKIN: There hasn't
21 been a determination made on that yet. What we're
22 going to do is we're going to distribute the
23 testimony today. That's being made available, and
24 actually, let me consult with the committee about
25 how they want to handle that.

1 We'll go off the record briefly.

2 INTERVENOR SARVEY: Okay.

3 (Thereupon, a recess was held
4 off the record.)

5 HEARING OFFICER TOMPKIN: We're back on
6 the record. And we've distributed copies of the
7 proposed direct testimony of Ben Hulse on behalf
8 of Charles Tusso. And I guess we wanted -- the
9 committee is interested in knowing at this time
10 whether there would be an objection to allowing
11 Mr. Hulse to testify, in light of the fact that
12 they do now have the prefiled testimony and will
13 have an opportunity to prepare.

14 APPLICANT COUNSEL KARP: Since this has
15 just been handed out, would it be possible to give
16 us a little time to take a look at it before we
17 actually address that question?

18 HEARING OFFICER TOMPKIN: Sure. We'll
19 go off the record.

20 PRESIDING COMMISSIONER PERNELL: Well,
21 no -- What I would like to do is stay on the
22 record and see if there is any public testimony at
23 this time. And if there is, we can take the
24 public testimony and allow the applicant and staff
25 a chance to review the document.

1 INTERVENOR SARVEY: Can I ask one
2 housekeeping question?

3 PRESIDING COMMISSIONER PERNELL: Yes.

4 INTERVENOR SARVEY: When will the
5 transcript of the previous testimony, including
6 today, be available? I would like to have it as
7 soon as possible to prepare my closing statement,
8 and I would like to know if it is possible to get
9 a transcript of it very soon, and I'm sure that
10 you will have to consult with the reporting
11 service to give me an answer to that. Thank you.

12 PRESIDING COMMISSIONER PERNELL: Do we
13 have an approximate time? What's the turnaround
14 time on the transcripts I guess is the question?

15 THE REPORTER: I don't know what the
16 normal time is. I don't do that. I don't know,
17 ten days?

18 INTERVENOR SUNDBERG: I talked to Robert
19 Mendonca before she left, and she said that she's
20 asked for these tapes to be expedited into written
21 form, but she did not guarantee that they would be
22 back within the time that we would need to review
23 that prior to the closing of the hearing.

24 PRESIDING COMMISSIONER PERNELL: Okay.
25 At this time I'm not sure that we can answer the

1 question, but it has been indicated by the Public
2 Adviser that she has requested to expedite the
3 transcripts into print. And at that time, you
4 would go through the Public Adviser's office to
5 get that information.

6 INTERVENOR SARVEY: Is it possible, and
7 we'll have to ask her, to receive that transcript
8 directly in expedited fashion or does it have to
9 go through the Public Adviser's office?

10 PRESIDING COMMISSIONER PERNELL: No, the
11 Public Adviser's office is the one that handles
12 external communication in these affairs.

13 INTERVENOR SARVEY: Okay.

14 PRESIDING COMMISSIONER PERNELL: The
15 Public Adviser's office will be receiving the
16 transcript, so the proper channel would be to go
17 through the Public Adviser's office.

18 INTERVENOR SARVEY: Thank you,
19 Mr. Pernell.

20 MS. WILLIS: May I make a point of
21 clarification? I know as far as staff is
22 concerned, we do not get a copy of the
23 transcripts. We have to receive it off the web.
24 So I think as soon as it does come into the
25 dockets, it goes on the web.

1 COMMISSIONER LAURIE: Just a comment. I
2 think the transcript might be helpful, but I truly
3 believe unnecessary for your oral closing
4 comments. The reason is as follows:

5 Ninety percent of everything on the
6 record is consistent with the written
7 documentation that's already in the record.
8 That's number one. Number two, I for one would be
9 looking for your own thoughts, not necessarily
10 dealing with technical objections that may be in
11 the realm of an expert witness, but rather matters
12 of your own knowledge.

13 And you can probably save comments as to
14 specific issues in the record to closing written
15 argument. And that's not really what I'm looking
16 for during your oral argument. I want to hear in
17 a more generalized state your own perspective as
18 to each one of the issues that you want to talk
19 about. So yeah, I guess the written transcript
20 may be necessary, but I don't think you're going
21 to see a lot there, one, that's not already
22 docketed information; and two, that will really be
23 relevant to what I would be interested in hearing
24 during closing argument.

25 So it's up to the presiding member as to

1 the timing of it all. I can tell you that if I
2 were making a closing argument, I would not read
3 the transcript.

4 INTERVENOR SARVEY: My intention wasn't
5 to read the transcript, my intention was to
6 supplement my disease called CRS -- You're
7 familiar with that term -- and that's the only
8 reason I requested it. I'm having trouble --
9 Things have moved so fast and I've been trying to
10 participate and listen to everything and a lot of
11 issues have just kind of slipped --

12 COMMISSIONER LAURIE: All right. I
13 understand.

14 INTERVENOR SARVEY: -- and I really want
15 to recall, and I just wanted to review the written
16 record. That was the only reason I requested it.
17 Thank you.

18 PRESIDING COMMISSIONER PERNELL: It
19 seems like it might be accessible to the public
20 faster on the web, if I'm understanding what staff
21 has just said.

22 MS. WILLIS: As long as the transcripts
23 have actually been filed and then they do go up on
24 the web. So as soon as they come in, I believe
25 they go up I believe within the day.

1 INTERVENOR SARVEY: Do they go up by the
2 day or by this complete hearing?

3 PRESIDING COMMISSIONER PERNELL: Again,
4 I would just direct you to the Public Adviser's
5 office. And I have to apologize for the Public
6 Adviser. She was ill and had to leave early.

7 And we are on the public comment, so I
8 would just ask if anyone has any comments on the
9 proceedings today to please come forward. Is
10 there anyone?

11 INTERVENOR TUSO: This is just open
12 comment now?

13 PRESIDING COMMISSIONER PERNELL: Yes,
14 public comment.

15 INTERVENOR TUSO: Public comment? Okay.
16 I just have one question that would help put my
17 mind at ease, I guess, a little bit.

18 HEARING OFFICER TOMPKIN: Would you say
19 your name for the record.

20 INTERVENOR TUSO: Oh, Chuck Tuso. I
21 just need to know if it's unanimous --

22 HEARING OFFICER TOMPKIN: Excuse me, one
23 moment.

24 (Thereupon, a recess was held
25 off the record.)

1 HEARING OFFICER TOMPKIN: Thank you,
2 Mr. Tusso.

3 INTERVENOR TUSO: Okay. My question is,
4 if GWF would have been aware of the City of
5 Tracy's unanimous opposition and the Board of
6 Supervisor's unanimous opposition earlier on in
7 this process, would they still have moved forward
8 with this project?

9 PRESIDING COMMISSIONER PERNELL: That
10 seems to be a question for GWF.

11 MR. GRATTAN: Yes. I thought your
12 question was, was GWF aware -- was going to be was
13 GWF aware of the City's unanimous resolution
14 against the project, and the answer is we became
15 aware of that well after the fact.

16 But if we were aware of this, and again,
17 I'm a lawyer for the project, I'm not an employee
18 of GWF, but my sense is that concerns get raised
19 early in a project. You have a process, you have
20 an Energy Commission. You have an open, on-the-
21 record evidentiary process and a public process,
22 and you use this process to take care of concerns.

23 So maybe if there was opposition, and
24 we're dealing hypothetically now, if there was
25 opposition early in the project, we were to have

1 resolved that opposition, and I think this is -- I
2 think we believe this is an excellent project, and
3 we would proceed through the public process with
4 it.

5 INTERVENOR TUSO: So what I'm
6 understanding is even though there was all this
7 opposition from all of our elected officials, you
8 would have still moved forward with this project.

9 MR. GRATTAN: We would still move
10 forward with the process. We believe that as the
11 process goes forward that concerns, which are
12 legitimate, that these concerns will get resolved,
13 and we will do everything we can to resolve them,
14 and have done so.

15 INTERVENOR TUSO: Okay. I think that's
16 the only question I have. Thank you very much.

17 PRESIDING COMMISSIONER PERNELL: Thank
18 you. Yes?

19 MS. SARVEY: My name is Robin Sarvey.
20 I've been here as an observer of the public last
21 night and today, and I just have one comment I
22 would like to make. I think that, to me, the
23 intervenors' questions have in general been pretty
24 clear and straightforward, and I feel a number of
25 times that the answers that they received back

1 from both staff and the applicant have either not
2 been direct answers or have been difficult to
3 understand from a public perspective.

4 So thank you.

5 PRESIDING COMMISSIONER PERNELL: Thank
6 you.

7 MS. DOMINGUEZ: Hello, my name is Carol
8 Dominguez. I'm a Tracy citizen, and I have two
9 sons with severe asthma. I'm very concerned about
10 this plant.

11 And I would like to know if the concern
12 has been brought about the City of Tracy's
13 intention to build a youth sports park adjacent to
14 the proposed peaker plant site, and whether or not
15 this Commission or GWF have any concerns about how
16 to mitigate that. I can't envision our children
17 playing soccer and baseball at a youth sports park
18 right next to a power plant.

19 It was endorsed after the comment sheets
20 were taken in from the public, and so I did not
21 express that as a concern on my original
22 complaint, but I would like to now. And I believe
23 it's a matter of public record because it was a
24 public meeting where this decision was made. So I
25 would like to bring that to the Commission's

1 attention, that the City of Tracy is moving
2 towards a youth sports park adjacent to existing
3 plants and a stone's throw away from this proposed
4 peaker plant.

5 Thank you.

6 PRESIDING COMMISSIONER PERNELL: Thank
7 you.

8 MS. STEWART: Just general comments,
9 right?

10 PRESIDING COMMISSIONER PERNELL: Just
11 general comments.

12 MS. STEWART: All right. I'm Lori
13 Stewart. I live at -- You want addresses or just
14 names? Just names?

15 PRESIDING COMMISSIONER PERNELL: Yes, we
16 need your name on the record, but you can give
17 other information if you so desire.

18 MS. STEWART: That's okay. My comment
19 is, in addition to Mr. Tusso has said that if you
20 would have known about this, all the opposition,
21 would you still have pursued it. And your
22 statement, if I understand it correctly, is you
23 would have pursued trying to make everyone agree
24 that it's a good project; is that correct?

25 MR. GRATTAN: I don't think we can make

1 people agree. We can explain the project, we can
2 agree to take measures to take care of citizens'
3 concerns with the project, but, you know, we
4 can't, we have no control over people's minds.

5 MS. STEWART: Okay. Too broad of a
6 statement on my part. You would have taken care
7 of concerns.

8 MR. GRATTAN: And are doing that, I
9 believe.

10 MS. STEWART: Not all the concerns,
11 though. Not the large concerns, and that's the
12 statement that I want to make as a citizen of
13 Tracy, that I don't feel that this company is
14 making -- is taking the concerns, the serious
15 concerns -- pollution, land use -- I don't know if
16 you -- Did you get to that?

17 PRESIDING COMMISSIONER PERNELL: We
18 haven't covered that yet.

19 MS. STEWART: Okay.

20 PRESIDING COMMISSIONER PERNELL: That
21 will be on the 13th.

22 MS. STEWART: Oh, the 13th, okay.

23 PRESIDING COMMISSIONER PERNELL:
24 Hopefully.

25 MS. STEWART: Anyway, there are big

1 concerns that need to be addressed, and I don't
2 think they're being addressed. If they properly
3 were addressed, the plant wouldn't be put in
4 there. Because there's health issues. People
5 have brought them forth and shown them to you.
6 They need to be taken into consideration.

7 Thank you.

8 PRESIDING COMMISSIONER PERNELL: Thank
9 you. Anyone else?

10 MR. YAMAMOTO: Hi. My name is Wayne
11 Yamamoto and I've spoken to a few of you. This is
12 not towards GWF, because I think you guys are
13 doing a pretty good business at what you do, and
14 what you do best. This is towards the
15 Commissioners.

16 I just got something off the web about
17 San Bruno's peaker plant, and that they're trying
18 to fight, to stop them from building the peaker
19 plant in San Bruno. Are you the folks on the same
20 Commission for that power plant, or are you aware
21 of that power plant? I'm sure you're aware of
22 that power plant because, you know, it's going on
23 right now.

24 PRESIDING COMMISSIONER PERNELL: Does
25 that say who the presiding members, the members of

1 the committee are? I'm not familiar with it.

2 COMMISSIONER LAURIE: You're probably
3 presiding member and I'm probably second.

4 (Laughter.)

5 COMMISSIONER LAURIE: If that was last
6 week, so --

7 PRESIDING COMMISSIONER PERNELL: We do
8 tend to get these.

9 MR. YAMAMOTO: It seems like it's a --
10 you know, the community is somewhat like the Tracy
11 community, raising up against this, and that it
12 was on a fast track application and they're doing
13 the best, as we are trying to do our best, to stop
14 the project.

15 Anyway, I think one of the biggest
16 problems that I have with all of this is that the
17 CEC has overriding jurisdiction over city and
18 county, which Governor Davis gave you the power
19 of, right?

20 PRESIDING COMMISSIONER PERNELL: Well,
21 that's not totally accurate. The statute is
22 called the Warren Alquist Act, which gave the
23 Commission, the statewide Commission, which looks
24 at the reliability of electricity and energy and
25 facilities statewide. So it's in statute as a

1 legislative mandate.

2 MR. YAMAMOTO: Right, and that occurred
3 in 1991?

4 PRESIDING COMMISSIONER PERNELL: No, it
5 was before my time, so --

6 MR. YAMAMOTO: Before your time? Before
7 my time too.

8 PRESIDING COMMISSIONER PERNELL: Does
9 anyone know?

10 MR. GRATTAN: Yes, I do. It was 1975.

11 PRESIDING COMMISSIONER PERNELL: Okay.

12 MR. YAMAMOTO: And that gave the CEC
13 that power.

14 PRESIDING COMMISSIONER PERNELL: It gave
15 the CEC jurisdiction over licensing power plants,
16 among other things, but --

17 MR. YAMAMOTO: And that over -- that
18 would override any city or county ordinance?

19 PRESIDING COMMISSIONER PERNELL: We do
20 have overriding powers, yes.

21 MR. YAMAMOTO: Okay. I was just
22 wondering. I guess I've got something for GWF
23 after all, but Tracy on the hot summer months,
24 it's really bad. And, you know, it gets hotter
25 here than -- in the valley than in the Bay Area.

1 But when the Bay Area gets hot, you know, we're
2 really in a pickle here. And would have bad air
3 qualities if the wind wasn't blowing and
4 situations like that.

5 And if you ran your power plant at the
6 same times, at these bad conditions -- say, in
7 Livermore they were cited for two days of bad air
8 quality. Would the plants be running if our
9 climate situation here in Tracy was at a critical
10 stage, or would you take that into consideration?

11 MR. GRATTAN: The plant would have to
12 run when the Department of Water Resources wanted
13 it to run. The plant, however, could not violate,
14 would not be allowed to violate any federal, state
15 or regional standards, basically federal and
16 regional standards.

17 MR. YAMAMOTO: Right.

18 MR. GRATTAN: We could not run in
19 violation of those standards.

20 MR. YAMAMOTO: Right, I understand that.
21 But, you know, there are circumstances where the
22 environment around the plant, as bad as it is --

23 MR. GRATTAN: Yeah, and I guess our view
24 of that is on those days, on those hot summer days
25 when everyone comes home and turns on the air

1 conditioning and the demand for power goes up, if
2 a clean new peaker plant isn't running, then
3 what's going to run? Well, it's going to be, we
4 believe, the emergency generators, which are
5 largely fueled by diesel, and which are 50 to 100
6 times as much as a plant like this.

7 MR. YAMAMOTO: You're right, I agree
8 with you on that part. But these engines are
9 mainly based with the big companies in the Silicon
10 Valley and in the Bay Area; isn't that true?

11 MR. GRATTAN: I believe that a gentleman
12 from the IBEW spoke last night and he mentioned
13 two or three that were in the local area that he
14 knew of, right here.

15 MR. YAMAMOTO: Yeah, right. Yeah,
16 Sutter Hospital and Safeway, right. But that's
17 three, I mean, we're talking about the Bay Area
18 where it has -- Well, anyway, okay, that answers
19 my question.

20 I just want to make a point that we get
21 extreme climate conditions here. No wind, hot
22 temperatures, and the quality of air is bad, and I
23 just want to make sure that you understand that at
24 those times, and with the peaker plant and the
25 Biomass plant still running, I mean, it makes our

1 air quality a lot worse. I just want to point
2 that out to you.

3 Thank you.

4 PRESIDING COMMISSIONER PERNELL: Thank
5 you. Do you forget something?

6 MR. YAMAMOTO: So tomorrow, is there --
7 I mean, on the 13th --

8 PRESIDING COMMISSIONER PERNELL: The
9 13th, yes.

10 MR. YAMAMOTO: -- is there going to be a
11 public forum again?

12 PRESIDING COMMISSIONER PERNELL: Right.
13 I will announce that. I can do that now, if
14 you're done.

15 MR. YAMAMOTO: I'm done, thank you.

16 PRESIDING COMMISSIONER PERNELL: Thank
17 you. Is there anyone else?

18 Supervisor, good to see you again today.

19 SUPERVISOR BEDFORD: Thank you. I just
20 wanted to make mention, and we talked about
21 schools --

22 PRESIDING COMMISSIONER PERNELL: For the
23 record --

24 SUPERVISOR BEDFORD: Oh, my name is Lynn
25 Bedford, 16950 West Byron Road. I'm currently a

1 sitting member on the San Joaquin County Board of
2 Supervisors in the Fifth District.

3 I just want to make mention that the
4 Latterville School District, in accordance with
5 the Mountain House Community Service District,
6 have proposed a siting for a school on the west
7 side of the Mountain House Parkway. At this time
8 now they're cutting streets, putting in disposer
9 plants and water treatment plants, so it's
10 inevitable that there is going to be a school on
11 the west side of the Mountain House Parkway,
12 between Byron Road and Grant Line Road.

13 Right now I'm doing road review, and I
14 just want to share with you, the San Joaquin
15 County is in a deficit spending on our county
16 roads, into the millions. And I would hope that
17 in this process, our director of Public Works can
18 put together a study and submit it to GWF in
19 relation to the needs of the county to put
20 appropriate roads in.

21 You know, on a daily basis I work along
22 with things as insignificant as a fruit stand, and
23 I'm going to tell you, the rules and the
24 regulations are ten times what we're dealing with
25 here today. Hopefully, when this task force is

1 formed, and I just want to know is it appropriate
2 for our task force to be -- when it's formed,
3 consist of department heads from the San Joaquin
4 County, people that are -- deal with
5 infrastructure on a daily basis, deal with the
6 Office of Emergency Service on a daily basis,
7 public safety. These are the people that I want
8 to have an opportunity to bring this information
9 forward to GWF or the committee, and hopefully
10 that's appropriate.

11 Tuesday we are going to sit down, and I
12 don't want to put somebody on this board that's
13 going to be -- I'm going to use the word slanted
14 or have self-serving interest. I want people that
15 represent the San Joaquin County. So I don't know
16 if that's appropriate, but that question would be
17 addressed to the attorney or Mr. Pernell.

18 PRESIDING COMMISSIONER PERNELL: Well,
19 as I'd said this morning I guess we at the
20 committee have no jurisdiction over the committee,
21 over the committee that you're talking about. So
22 I think that's -- again, I think that's something
23 that needs to be negotiated or talked about
24 between you and GWF, in terms of the committee
25 that is being formed for this area.

1 SUPERVISOR BEDFORD: Well, I would
2 appreciate a response from GWF. They have told me
3 they want to cooperate and they want to resolve
4 these issues, but it's going to be very difficult
5 to resolve these issues without having a traffic
6 study on the project.

7 Because we spoke today. One thing I
8 wasn't quite sure of, is the traffic pattern going
9 to go east on Schulte Road until it comes to the
10 Owens Illinois or the Tracy Biomass and then head
11 in a northerly direction and then go over the
12 railroad tracks into the siting, or is it going to
13 go down to Lammers Road, go south on -- go down
14 Schulte Road and go south on Lammers Road and then
15 come up into that siting?

16 I never heard, or maybe I never
17 understood, exactly the path that your ammonia
18 trucks are going to follow.

19 PRESIDING COMMISSIONER PERNELL:
20 Mr. Grattan?

21 MR. GRATTAN: I don't have that answer.
22 We can, for the record, say how many ammonia
23 trucks a month and we can also say the exact
24 route, and I think Doug Wheeler wants to address
25 it. It's not that much traffic, and by the way, a

1 traffic study has been performed.

2 SUPERVISOR BEDFORD: Yes.

3 MR. WHEELER: Yeah, Doug Wheeler, GWF.

4 The traffic route for the ammonia trucks, and I
5 believe that was the question that the supervisor
6 raised, would be the ammonia most likely would be
7 delivered from the Lathrop area. So that would be
8 south on I-5 to 205 to the Mountain House Parkway,
9 south on Mountain House to Schulte, back east on
10 Schulte to the access to the project site, which
11 is immediately adjacent and west of the existing
12 Biomass plant.

13 MR. GRATTAN: And Doug, could you tell
14 us how many ammonia trucks per month or per year
15 would be made?

16 MR. WHEELER: As I recall, the
17 application states it's approximately one per
18 week.

19 MR. GRATTAN: Thanks.

20 SUPERVISOR BEDFORD: So then I
21 understand GWF is going to apply to the railroad
22 to get a crossing to go over that road that leads
23 back into the proposed site; is that what I'm
24 hearing?

25 MR. WHEELER: Yes, that is correct. We

1 have talked to the railroad and they are providing
2 a crossing easement.

3 SUPERVISOR BEDFORD: And I guess the
4 second part to my question is still not answered.
5 Is it appropriate for our department heads to be
6 on this task force? Is that something that GWF
7 would approve of?

8 MR. WHEELER: I think as I stated last
9 evening, we want to work with the county however
10 they feel is appropriate. I think the City of
11 Tracy currently has a task force that we've had
12 one meeting. I would hope that we could do this
13 as one task force. If that's not consistent with
14 the county's objectives, then suffice to say we
15 want to work with the county and address their
16 issues.

17 SUPERVISOR BEDFORD: So I'll understand
18 that that is yes?

19 MR. WHEELER: Yes.

20 SUPERVISOR BEDFORD: Thank you very
21 much.

22 PRESIDING COMMISSIONER PERNELL: Thank
23 you. Our next meeting would be on the 13th -- Oh,
24 I'm sorry, is there anyone else?

25 COMMISSIONER LAURIE: While we're

1 waiting for the next speaker, I should note for
2 Mr. Yamamoto that the San Bruno case, I referred
3 to it as United Golden Gate case. It was my case,
4 I was presiding member last year. And the
5 Commission approved it last year, and there is now
6 discussion by the State of California of assuming
7 ownership over that plant through the new
8 California Power Authority.

9 PRESIDING COMMISSIONER PERNELL: That is
10 it?

11 COMMISSIONER LAURIE: Yes, that's United
12 Golden Gate.

13 MS. ELISSAGARAY: Annette Elissagaray,
14 E-l-i-s-s-a-g-a-r-a-y.

15 How will GWF be able to mitigate the
16 concerns and ease the minds of the Tracy citizens
17 regarding their quality of life issues? The
18 citizens and property owners in close proximity to
19 the proposed plant fear their future property
20 values will plummet and the air that their
21 children breathe while playing in their back yards
22 will be hazardous.

23 How can you mitigate or relieve these
24 concerns? Thank you.

25 MR. STEWART: Hello, Scott Stewart.

1 Sorry about the phone call there,
2 Mr. Commissioner. I don't have any questions for
3 these folks over here. I think they did a great
4 job and they spent a lot of money over here.

5 My comment is this: I'm not a city
6 councilperson, I'm not a Board of Supervisor
7 person, I'm just a resident of Tracy. I'm a
8 firefighter by trade. I've lived here for about
9 25 years. And I'm not saying this is a bad
10 project, I think it's a good project, it just
11 needs to be relocated.

12 I cannot honestly -- I've been to almost
13 every meeting, and I cannot honestly think that
14 the Commission is going to go back -- and they've
15 listened to all of the facts, we're not done yet,
16 but the concerns of the people that live in the
17 City of Tracy and in the county, and there is
18 nobody that is for this project -- how they can go
19 back and sit there and approve this project. I
20 really have a problem with that, and I don't think
21 that you will, and I hope that you don't. Nothing
22 against these folks over here, they just need to
23 put it somewhere else.

24 And I empower you to make the right
25 decision here and it is your decision,

1 Mr. Commissioner. Thank you very much.

2 PRESIDING COMMISSIONER PERNELL: Thank
3 you.

4 INTERVENOR TUSO: Is it okay to come up
5 again?

6 PRESIDING COMMISSIONER PERNELL: Yeah,
7 briefly.

8 INTERVENOR TUSO: Briefly, okay. I've
9 got to think about what I want to say.

10 I guess what I want to say is that my
11 family has been out there for over 50 years
12 minding our business, and all of a sudden we're
13 confronted with this situation, and we're just
14 here to defend ourselves. We have nothing to gain
15 one way or the other, we're just trying to protect
16 what we have. We're trying to be status quo.

17 I've taken two to three months away from
18 my work, I've been sidetracked by this project.
19 I've had to hire an attorney to defend what we
20 have. It's not for a gain, it's just to defend
21 what we have. We don't want to lose what we've
22 waited 50 years, we've waited for good things to
23 happen in our area there. We don't feel that this
24 is a good thing for our area. It's going to take
25 away from what we've waited for.

1 And we haven't played on an even playing
2 field, we're just average citizens out there.
3 And, you know, these folks over here are a well-
4 oiled machine. They have an answer for everything
5 and you do a good job at what you do. Us citizens
6 of Tracy, we're just a bunch of parts on the
7 floor, a bunch of mechanical parts trying to make
8 something operate here and it's hard. It's real
9 hard for us to do that.

10 It's almost an impossible feat to
11 compete with this and I don't think the system
12 works very well here for the people. We should
13 have some public defense to help the people here
14 to know the process. We're just kind of getting
15 the swing of it here toward the end of it. If we
16 were to start all over today we would do it
17 completely different and maybe have a better
18 position on this whole thing.

19 But we just don't feel it's been a fair
20 shake. The time factor has been very limited for
21 us, and, you know, we just -- I guess what I'm
22 getting, my point is because I had to hire an
23 attorney and he's trying to bring some testimony
24 here, I mean, I don't know all the protocol, I've
25 never done this in my life, and that needs to

1 really be considered to try to make things a
2 little more even here. So that's what I'm asking,
3 that that testimony that my attorney, Mr.
4 Seligman, has presented has to be taken into
5 consideration so we have a fair opportunity to
6 voice our opinions on this.

7 Thank you.

8 PRESIDING COMMISSIONER PERNELL: Now,
9 Mr. Tusó, we have, the committee has ruled on your
10 attorney's documents. Oh, scratch that. The
11 committee will rule on that in a minute.

12 Let me just ask the applicant, have you
13 had a chance to review the document?

14 MR. GRATTAN: Yes, I have, and the
15 applicant would not object to the admission of
16 this testimony into evidence.

17 HEARING OFFICER TOMPKIN: Staff, do you
18 have any objections?

19 MS. WILLIS: My understanding is that
20 Mr. Hulse will be available for cross examination?

21 INTERVENOR TUSO: To the best of my
22 knowledge, that's what's going to happen.

23 MS. WILLIS: As long as he's available
24 for cross examination, we have no objection.

25 PRESIDING COMMISSIONER PERNELL:

1 Intervenor, do you have any objection?

2 INTERVENOR SUNDBERG: I have absolutely
3 no objection to Mr. Hulse being present and us
4 being able to cross examine him, and I would
5 accept his testimony for both myself and the City.

6 HEARING OFFICER TOMPKIN: Thank you.

7 INTERVENOR SARVEY: I have a question
8 and then I'll decide whether I want to object or
9 not. Will other parties be allowed to testify now
10 that we've reopened this, or is this just
11 Mr. Hulse going --

12 PRESIDING COMMISSIONER PERNELL: It's
13 not reopened. You will be allowed to cross
14 examine Mr. Tusso's witness.

15 INTERVENOR SARVEY: Right, but what I'm
16 asking is will other parties be allowed to present
17 expert witnesses if they get their testimony in in
18 the next 24 hours, or is this just for Mr. Hulse
19 only?

20 PRESIDING COMMISSIONER PERNELL:
21 Mr. Hulse, Mr. Tusso's attorney sent a statement
22 saying that he would have his information in, so
23 that all of the parties were alerted. And are you
24 saying that there's -- you have witnesses that
25 have -- I'm not understanding your question.

1 INTERVENOR SARVEY: What I'm asking is
2 are the rest of the intervenors or GWF or staff
3 allowed to supply any additional witnesses in the
4 area of land use if they get their statements in,
5 written statements and qualifications in within
6 the next 24 hours?

7 HEARING OFFICER TOMPKIN: Procedurally,
8 I don't think that would be appropriate,
9 Mr. Sarvey. Mr. Tusso did identify this witness
10 early on. Evidently there was a problem in terms
11 of gaining a release for his testimony. The
12 committee was advised of that in advance, the
13 appropriate motions were filed, Mr. Seligman
14 appeared at the beginning of the proceeding, and
15 indicated that that was an issue, so all the
16 parties were on notice.

17 And if you look at the order that
18 issued, we do identify a witness for Mr. Tusso in
19 that area. So it's really a different situation.
20 This has been before the public and the parties
21 for a while, and it would be unfair at this point
22 to allow someone to file something by Monday and
23 to expect all of the other parties to be in a
24 position to respond.

25 So I'm going to have to respectfully say

1 no, that we're not going to open it up in that
2 manner.

3 INTERVENOR SARVEY: Okay. I have no
4 objection to Mr. Hulse as a witness, but I do
5 object to the special treatment that he received
6 that I didn't. Thank you.

7 MS. WILLIS: May I add a comment?

8 PRESIDING COMMISSIONER PERNELL: Yes.

9 MS. WILLIS: Generally in proceedings
10 such as this, the local jurisdiction is allowed to
11 provide testimony, just as a rule, because they
12 are the local jurisdiction. And so as staff we
13 would expect and we had hoped that a county
14 representative would be present.

15 HEARING OFFICER TOMPKIN: That's true,
16 under the Public Resources Code, and other
17 applicable statutes. We are encouraged to give
18 that information by statute.

19 INTERVENOR SARVEY: Yeah, I just wanted
20 to comment that that was part of being, having a
21 level playing field was to apply the rules to
22 everyone. I have no objections to Mr. Hulse, I
23 think his testimony is absolutely essential to
24 this proceeding, and I just wanted to say that I
25 would like to be afforded the same privileges as

1 the County of -- San Joaquin County, the City of
2 Tracy, the applicant, the staff, and that's all
3 I'm asking for, and that's what my objection is
4 based on. Thank you.

5 HEARING OFFICER TOMPKIN: Thank you,
6 Mr. Sarvey.

7 PRESIDING COMMISSIONER PERNELL: Okay.
8 Right now the committee -- Just one second, you'll
9 be allowed to speak. I do want to rule on
10 Mr. Tusso's issue at this time.

11 HEARING OFFICER TOMPKIN: The committee
12 has consulted regarding this matter, and the
13 determination is that we will permit the testimony
14 of Mr. Hulse that is being sponsored by Mr. Tusso,
15 and that will be permitted when we cover the topic
16 of land use which is scheduled for March 13th. I
17 believe that's Wednesday of next week.

18 PRESIDING COMMISSIONER PERNELL: Okay.
19 Sir, we have one other person under public
20 comment.

21 MR. WILLIAMSON: Thank you. Brad
22 Williamson again. I just wanted to state for the
23 record that not all Tracy residents are against
24 this project. The IBEW Local 595 has 94 members
25 of our local that live in the Tracy area that

1 support this project.

2 Thank you.

3 PRESIDING COMMISSIONER PERNELL: Thank
4 you.

5 MR. KLEIN: My name is Robert Klein. I
6 am not a Tracy resident or a resident or landowner
7 of San Joaquin County, but I probably spend 75
8 percent of my time in San Joaquin County because
9 that's where I work. So I would like to -- Just a
10 food for thought that we've talked to, like I
11 said, I don't have anything against Tracy
12 residents or anything like that, but the public
13 comment that has been made and brought forth, just
14 something that I witnessed and am thinking about.

15 It says I don't believe that the City of
16 Tracy would locate a sports park near a facility
17 that would cause harmful health effects to the
18 community. The Tracy peaker plant has been in the
19 permitting process for months. Knowing the
20 location of the peaker plant, the City would
21 locate a sports park within the last two weeks
22 next to where the peaker plant site has been
23 proposed.

24 So I'm all for kids and playing sports.
25 I don't believe that the Tracy City Council

1 Planning Commission would want to do that to their
2 citizens, to be harmful and not healthy to their
3 community. So I believe we've answered a lot of
4 questions and things. I'm just trying, you know,
5 what's been brought forward from the other people
6 and observing. I think this is a pretty good
7 thing.

8 The health issues that have been brought
9 up, with the cleanness of this or the harmfulness
10 of this, I don't think the City of Tracy would do
11 that to their citizens, plant a sports park right
12 next to this type of facility.

13 So thank you very much for your time.

14 PRESIDING COMMISSIONER PERNELL: Thank
15 you.

16 INTERVENOR SUNDBERG: Can I respond to
17 that?

18 HEARING OFFICER TOMPKIN: You're free to
19 make a public comment after this gentleman who is
20 coming up.

21 INTERVENOR SUNDBERG: Thank you.

22 MR. ROSCELLI: Yes. My name is Mike
23 Roscelli, and I represent the carpenters,
24 community carpenters of this area.

25 It seems like the issues here are

1 development and I think some of these people maybe
2 want to develop their land. And in regards to
3 that, they're going to need energy to do that, but
4 they don't want the energy to come from their back
5 yard, they want it to come from someplace else, so
6 it would be in the best interest that the
7 community would be responsible for some of their
8 own energy needs.

9 Thank you.

10 PRESIDING COMMISSIONER PERNELL: Thank
11 you. We're under public comment.

12 INTERVENOR SUNDBERG: Irene Sundberg,
13 public comment. I wanted to say that regarding
14 the sports park, this sports park has just been
15 approved by the City of Tracy. They are
16 negotiating right now to put in these soccer
17 fields. So the committee needs to know that, the
18 Commission needs to know that. And if you need
19 more information, I can get that supplied to you.

20 Thank you.

21 PRESIDING COMMISSIONER PERNELL: Thank
22 you. Okay. That ends our public comment period.

23 I would just make a brief announcement,
24 first of all, Commissioner Laurie, would you like
25 to make a statement before closing?

1 COMMISSIONER LAURIE: No.

2 PRESIDING COMMISSIONER PERNELL: The
3 announcement is the committee will be back here on
4 the 13th covering Visual Resources, Noise and Land
5 Use. We will begin at 10:00 a.m. sharp.

6 Is there anything else to come before
7 this committee? Hearing none, seeing none, this
8 committee is adjourned. Thank you all.

9 (Thereupon, the hearing was
10 adjourned at 2:15 p.m.)

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CERTIFICATE OF REPORTER

I, VALORIE PHILLIPS, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission hearing; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said workshop, nor in any way interested in outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 25th day of March, 2002.

VALORIE PHILLIPS

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